Title 2: Grants and Agreements -- PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Item	Law Number	Jurisdiction	Type of Law	Statuary Requirement and/or Authority Granted	Does this law specify who (customer) the agency must or may serve? (Y/N)	Does the law specify a deliverable (product or service) the agency must or may provide? (Y/N)
1,263	Subpart B—General Provisions §200.100 Purpose	Federal	Statute	(a)(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in §200.101 Applicability. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§200.102 Exceptions and 200.210 Information contained in a Federal award, or unless specifically required by Federal statute, regulation, or Executive Order. (2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101-6106). (b) Administrative requirements. Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for Federal awarding agency management of Federal grant programs before the Federal award has been made, and the requirements Federal awarding agencies may impose on non-Federal entities in the Federal award.	N	N

1,264	§200.101 Applicability	Federal	Statute	(a) General applicability to Federal agencies. The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards. (b)(1) Applicability to different types of Federal awards. The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in Subpart D—Post Federal Award Requirements of this part, §§200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise. eCFR graphic er19de14.000.gif View or download PDF (2) Federal award of cost-reimbursement contract under the FAR to a non-	Y	Y

1,265	§200.102 Exceptions	Federal	Statute	(a) With the exception of Subpart F—Audit Requirements of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances. Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at www.whitehouse.gov/omb. (b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part. (c) The Federal awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when, required by Federal statutes or regulations, except for the requirements in Subpart F—Audit Requirements of this part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in Subpart A—Acronyms and Definitions of this part, except for those requirements imposed by statute or in Subpart F—Audit Requirements of this part. (d) On a case-by-case basis, OMB will approve new strategies for Federal awards when proposed by the Federal awarding agency in accordance with	N	N
1,266	§200.103 Authorities	Federal	Statute	This part is issued under the following authorities. (a) Subpart B—General Provisions of this part through Subpart D—Post Federal Award Requirements of this part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 31 U.S.C. 1111 (Improving Economy and Efficiency of the United States Government), 41 U.S.C. 1101-1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541 (“Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President”), the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507), as well as The Federal Program Information Act (Public Law 95-220 and Public Law 98-169, as amended, codified at 31 U.S.C. 6101-6106). (b) Subpart E—Cost Principles of this part is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101-1125); the Chief Financial Officers Act of 1990 (31 U.S.C. 503-504); Reorganization Plan No. 2 of 1970; and Executive Order No. 11541, “Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President.” (c) Subpart F—Audit Requirements of this part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507).	N	N

1,267	§200.104 Supersession	Federal	Statute	As described in §200.110 Effective/applicability date, this part supersedes the following OMB guidance documents and regulations under Title 2 of the Code of Federal Regulations: (a) A-21, “Cost Principles for Educational Institutions” (2 CFR part 220); (b) A-87, “Cost Principles for State, Local and Indian Tribal Governments” (2 CFR part 225) and also Federal Register notice 51 FR 552 (January 6, 1986); (c) A-89, “Federal Domestic Assistance Program Information”; (d) A-102, “Grant Awards and Cooperative Agreements with State and Local Governments”; (e) A-110, “Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations” (codified at 2 CFR 215); (f) A-122, “Cost Principles for Non-Profit Organizations” (2 CFR part 230); (g) A-133, “Audits of States, Local Governments and Non-Profit Organizations ”; and (h) Those sections of A-50 related to audits performed under Subpart F—Audit Requirements of this part.	N	N
1,268	§200.105 Effect on other issuances	Federal	Statute	For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part must be superseded upon implementation of this part by the Federal agency, except to the extent they are required by statute or authorized in accordance with the provisions in §200.102 Exceptions.	N	N
1,269	§200.106 Agency implementation	Federal	Statute	The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in this part. Federal agencies making Federal awards to non-Federal entities must implement the language in the Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards of this part through Subpart F—Audit Requirements of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.	N	N
1,270	§200.107 OMB responsibilities	Federal	Statute	OMB will review Federal agency regulations and implementation of this part, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.	N	N

1,271	§200.108 Inquiries	Federal	Statute	Inquiries concerning this part may be directed to the Office of Federal Financial Management Office of Management and Budget, in Washington, DC. Non-Federal entities' inquiries should be addressed to the Federal awarding agency, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entity as appropriate.	N	N
1,272	§200.109 Review date	Federal	Statute	OMB will review this part at least every five years after December 26, 2013.	N	N
1,273	§200.110 Effective/applicability date	Federal	Statute	(a) The standards set forth in this part which affect administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final. Federal awarding agencies must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB. For the procurement standards in §§200.317-200.326, non-Federal entities may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in §200.104) for one additional fiscal year after this part goes into effect. If a non-Federal entity chooses to use the previous procurement standards for an additional fiscal year before adopting the procurement standards in this part, the non-Federal entity must document this decision in their internal procurement policies. (b) The standards set forth in Subpart F—Audit Requirements of this part and any other standards which apply directly to Federal agencies will be effective December 26, 2013 and will apply to audits of fiscal years beginning on or after December 26, 2014.	N	N
1,274	§200.111 English language	Federal	Statute	(a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the Federal awarding agency receives applications in another currency, the Federal awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application. (b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.	N	N

1,275	§200.112 Conflict of interest	Federal	Statute	The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.	Y	Y
1,276	§200.113 Mandatory disclosures	Federal	Statute	The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180 and 31 U.S.C. 3321).	Y	Y
1,277	Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards §200.200 Purpose	Federal	Statute	(a) Sections 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts through 200.208 Certifications and representations prescribe instructions and other pre-award matters to be used in the announcement and application process. (b) Use of §§200.203 Notices of funding opportunities, 200.204 Federal awarding agency review of merit of proposals, 200.205 Federal awarding agency review of risk posed by applicants, and 200.207 Specific conditions, is required only for competitive Federal awards, but may also be used by the Federal awarding agency for non-competitive awards where appropriate or where required by Federal statute.	N	N

1,278	§200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts	Federal	Statute	(a) The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (i.e., grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08). (b) Fixed Amount Awards. In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in §200.332 Fixed amount subawards, may use fixed amount awards (see §200.45 Fixed amount awards) to which the following conditions apply: (1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to: (i) In several partial payments, the amount of each agreed upon in advance, and the “milestone” or event triggering the payment also agreed upon in	Y	Y

1,279	§200.202 Requirement to provide public notice of Federal financial assistance programs	Federal	Statute	(a) The Federal awarding agency must notify the public of Federal programs in the Catalog of Federal Domestic Assistance (CFDA), maintained by the General Services Administration (GSA). (1) The CFDA, or any OMB-designated replacement, is the single, authoritative, governmentwide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government. (2) The information that the Federal awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission. (3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the CFDA as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute. (b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must submit the following information to GSA: (1) Program Description, Purpose, Goals and Measurement. A brief summary of the statutory or regulatory requirements of the program and its intended	N	N

1,280	§200.203 Notices of funding opportunities	Federal	Statute	For competitive grants and cooperative agreements, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice: (a) Summary Information in Notices of Funding Opportunities. The Federal awarding agency must display the following information posted on the OMB-designated governmentwide Web site for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement: (1) Federal Awarding Agency Name; (2) Funding Opportunity Title; (3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity); (4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided; (5) Catalog of Federal Financial Assistance (CFDA) Number(s); (6) Key Dates. Key dates include due dates for applications or Executive	N	N
1,281	§200.204 Federal awarding agency review of merit of proposals	Federal	Statute	For competitive grants or cooperative agreements, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications. This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this part, Full text of the Funding Opportunity.) See also §200.203 Notices of funding opportunities.	N	N

1,282	§200.205 Federal awarding agency review of risk posed by applicants	Federal	Statute	(a) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information, such as SAM Exclusions and “Do Not Pay”. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations. (b) In addition, for competitive grants or cooperative agreements, the Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in §200.203 Notices of funding opportunities. (c) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following: (1) Financial stability; (2) Quality of management systems and ability to meet the management standards prescribed in this part;	N	Y
1,283	§200.206 Standard application requirements	Federal	Statute	(a) Paperwork clearances. The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis. (b) If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.	N	N

1,284	§200.207 Specific conditions	Federal	Statute	(a) The Federal awarding agency or pass-through entity may impose additional specific award conditions as needed, in accordance with paragraphs (b) and (c) of this section, under the following circumstances: (1) Based on the criteria set forth in §200.205 Federal awarding agency review of risk posed by applicants; (2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award; (3) When an applicant or recipient fails to meet expected performance goals as described in §200.210 Information contained in a Federal award; or (4) When an applicant or recipient is not otherwise responsible. (b) These additional Federal award conditions may include items such as the following: (1) Requiring payments as reimbursements rather than advance payments; (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance; (3) Requiring additional, more detailed financial reports;	Y	Y
1,285	§200.208 Certifications and representations	Federal	Statute	Unless prohibited by Federal statutes or regulations, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.	Y	Y
1,286	§200.209 Pre-award costs	Federal	Statute	For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see §200.458 Pre-award costs.	N	N

1,287	§200.210 Information contained in a Federal award	Federal	Statute	A Federal award must include the following information: (a) General Federal Award Information. The Federal awarding agency must include the following general Federal award information in each Federal award: (1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315); (2) Recipient's unique entity identifier; (3) Unique Federal Award Identification Number (FAIN); (4) Federal Award Date (see §200.39 Federal award date); (5) Period of Performance Start and End Date; (6) Amount of Federal Funds Obligated by this action; (7) Total Amount of Federal Funds Obligated; (8) Total Amount of the Federal Award; (9) Budget Approved by the Federal Awarding Agency;	N	N
1,288	§200.211 Public access to Federal award information	Federal	Statute	(a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide Web site (at time of publication, www.USAspending.gov). (b) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.	N	N
1,289	§200.212 Suspension and debarment	Federal	Statute	Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.	N	N

1,290	Subpart D—Post Federal Award Requirements Standards for Financial and Program Management §200.300 Statutory and national policy requirements	Federal	Statute	(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award. (b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 CFR part 170 Reporting Subaward and Executive Compensation Information. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.	N	Y
1,291	§200.301 Performance measurement	Federal	Statute	The Federal awarding agency must require the recipient to use OMB-approved standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance should be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The Federal awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in §200.210 Information contained in a Federal award. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made.	Y	Y

1,292	§200.302 Financial management	Federal	Statute	(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also §200.450 Lobbying. (b) The financial management system of each non-Federal entity must provide for the following (see also §§200.333 Retention requirements for records, 200.334 Requests for transfer of records, 200.335 Methods for collection, transmission and storage of information, 200.336 Access to records, and 200.337 Restrictions on public access to records): (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any. (2) Accurate, current, and complete disclosure of the financial results of each	Y	Y

1,293	§200.303 Internal controls	Federal	Statute	The non-Federal entity must: (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards. (c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards. (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings. (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.	Y	Y
1,294	§200.304 Bonds	Federal	Statute	The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances: (a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal Government. (b) The Federal awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal Government's interest. (c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR Part 223, “Surety Companies Doing Business with the United States.”	N	N

1,295	§200.305 Payment	Federal	Statute	(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies. (b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302 Financial management paragraph (b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard governmentwide information collection requests to request payment. (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the	Y	Y

1,296	§200.306 Cost sharing or matching	Federal	Statute	(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. See also §§200.414 Indirect (F&A) costs, 200.203 Notices of funding opportunities, and Appendix I to Part 200—Full Text of Notice of Funding Opportunity. (b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria: (1) Are verifiable from the non-Federal entity's records; (2) Are not included as contributions for any other Federal award; (3) Are necessary and reasonable for accomplishment of project or program objectives; (4) Are allowable under Subpart E—Cost Principles of this part;	Y	Y

1,297	§200.307 Program income	Federal	Statute	(a) General. Non-Federal entities are encouraged to earn income to defray program costs where appropriate. (b) Cost of generating program income. If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award. (c) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income. (d) Property. Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of Subpart D—Post Federal Award Requirements of this part, Property Standards §§200.311 Real property, 200.313 Equipment, and 200.314 Supplies, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award. (e) Use of program income. If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its	Y	Y

1,298	§200.308 Revision of budget and program plans	Federal	Statute	(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see §200.43 Federal share) or only the Federal share, depending upon Federal awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate. (b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section. (c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons: (1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval). (2) Change in a key person specified in the application or the Federal award. (3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator. (4) The inclusion, unless waived by the Federal awarding agency, of costs	Y	Y
1,299	§200.309 Period of performance	Federal	Statute	A non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance (except as described in §200.461 Publication and printing costs) and any costs incurred before the Federal awarding agency or pass-through entity made the Federal award that were authorized by the Federal awarding agency or pass-through entity.	N	Y
1,300	Property Standards §200.310 Insurance coverage	Federal	Statute	The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.	Y	Y

1,301	§200.311 Real property	Federal	Statute	(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity. (b) Use. Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests. (c) Disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives: (1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property. (2) Sell the property and compensate the Federal awarding agency. The	Y	Y

1,302	§200.312 Federally-owned and exempt property	Federal	Statute	(a) Title to federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization. (b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, “Educational Technology: Ensuring Opportunity for All Children in the Next Century.”). The Federal awarding agency must issue appropriate instructions to the non-Federal entity. (c) Exempt federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt federally-owned property	Y	Y

1,303	§200.313 Equipment	Federal	Statute	See also §200.439 Equipment and other capital expenditures. (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions: (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project. (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity. (3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section. (b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.	Y	Y
1,304	§200.314 Supplies	Federal	Statute	See also §200.453 Materials and supplies costs, including costs of computing devices. (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See §200.313 Equipment, paragraph (e)(2) for the calculation methodology. (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.	Y	Y

1,305	§200.315 Intangible property	Federal	Statute	(a) Title to intangible property (see §200.59 Intangible property) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in §200.313 Equipment paragraph (e). (b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. (c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.” (d) The Federal Government has the right to: (1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and	Y	Y
1,306	§200.316 Property trust relationship	Federal	Statute	Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.	Y	Y
1,307	Procurement Standards §200.317 Procurements by states	Federal	Statute	When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.	Y	Y

1,308	§200.318 General procurement standards	Federal	Statute	(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part. (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. (c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by	Y	Y

1,309	§200.319 Competition	Federal	Statute	(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding; (3) Noncompetitive pricing practices between firms or between affiliated companies; (4) Noncompetitive contracts to consultants that are on retainer contracts; (5) Organizational conflicts of interest; (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and	Y	Y

1,310	§200.320 Methods of procurement to be followed	Federal	Statute	The non-Federal entity must use one of the following methods of procurement. (a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. (c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.	Y	Y

1,311	§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.	Federal	Statute	(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the	Y	Y
1,312	§200.322 Procurement of recovered materials	Federal	Statute	A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.	N	N

1,313	§200.323 Contract cost and price	Federal	Statute	(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles. (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.	Y	Y

1,314	§200.324 Federal awarding agency or pass-through entity review	Federal	Statute	(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when: (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part; (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; (3) The procurement, which is expected to exceed the Simplified Acquisition	Y	Y

1,315	§200.325 Bonding requirements	Federal	Statute	For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows: (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.	N	N
1,316	§200.326 Contract provisions	Federal	Statute	The non-Federal entity’s contracts must contain the applicable provisions described in Appendix II to Part 200— Contract Provisions for non-Federal Entity Contracts Under Federal Awards.	N	N
1,317	Performance and Financial Monitoring and Reporting §200.327 Financial reporting	Federal	Statute	Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.	Y	Y

1,318	§200.328 Monitoring and reporting program performance	Federal	Statute	(a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §200.331 Requirements for pass-through entities. (b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site). (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final	Y	Y
1,319	§200.329 Reporting on real property	Federal	Statute	The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).	Y	Y

1,320	Subrecipient Monitoring and Management §200.330 Subrecipient and contractor determinations	Federal	Statute	The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section. (a) Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity: (1) Determines who is eligible to receive what Federal assistance; (2) Has its performance measured in relation to whether objectives of a Federal program were met; (3) Has responsibility for programmatic decision making; (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and	Y	Y

1,321	§200.331 Requirements for pass-through entities	Federal	Statute	All pass-through entities must: (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes: (1) Federal Award Identification. (i) Subrecipient name (which must match the name associated with its unique entity identifier); (ii) Subrecipient's unique entity identifier; (iii) Federal Award Identification Number (FAIN); (iv) Federal Award Date (see §200.39 Federal award date); (v) Subaward Period of Performance Start and End Date; (vi) Amount of Federal Funds Obligated by this action;	Y	Y
1,322	§200.332 Fixed amount subawards	Federal	Statute	With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.	Y	Y

1,323	Record Retention and Access §200.333 Retention requirements for records	Federal	Statute	Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following: (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. (b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition. (d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not	Y	Y
1,324	§200.334 Requests for transfer of records	Federal	Statute	The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.	N	N

1,325	§200.335 Methods for collection, transmission and storage of information	Federal	Statute	In accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, the Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.	Y	Y
1,326	§200.336 Access to records	Federal	Statute	(a) Records of non-Federal entities. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents. (b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate. (c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.	N	N

1,327	§200.337 Restrictions on public access to records	Federal	Statute	No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under §200.315 Intangible property. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.	Y	Y
1,328	Remedies for Noncompliance §200.338 Remedies for noncompliance	Federal	Statute	If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in §200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances: (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity. (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance. (c) Wholly or partly suspend or terminate the Federal award. (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency). (e) Withhold further Federal awards for the project or program. (f) Take other remedies that may be legally available	N	N

1,329	§200.339 Termination	Federal	Statute	(a) The Federal award may be terminated in whole or in part as follows: (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award; (2) By the Federal awarding agency or pass-through entity for cause; (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety. (b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§200.343	N	N
1,330	§200.340 Notification of termination requirement	Federal	Statute	(a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination. (b) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity. (c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.	N	N

1,331	§200.341 Opportunities to object, hearings and appeals	Federal	Statute	Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.	N	N
1,332	§200.342 Effects of suspension and termination	Federal	Statute	Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if: (a) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and (b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.	N	N
1,333	Closeout §200.343 Closeout	Federal	Statute	The Federal awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance. (a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity. (b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award. (c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out. (d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity	Y	Y

1,334	Post-Closeout Adjustments and Continuing Responsibilities §200.344 Post-closeout adjustments and continuing responsibilities	Federal	Statute	(a) The closeout of a Federal award does not affect any of the following: (1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period. (2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments. (3) Audit requirements in Subpart F—Audit Requirements of this part. (4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this part, §§200.310 Insurance Coverage through 200.316 Property trust relationship. (5) Records retention as required in Subpart D—Post Federal Award Requirements of this part, §§200.333 Retention requirements for records through 200.337 Restrictions on public access to records. (b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-	Y	Y
1,335	Collection of Amounts Due §200.345 Collection of amounts due	Federal	Statute	(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by: (1) Making an administrative offset against other requests for reimbursements; (2) Withholding advance payments otherwise due to the non-Federal entity; or (3) Other action permitted by Federal statute. (b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.	N	N

1,336	Subpart E—Cost Principles General Provisions §200.400 Policy guide	Federal	Statute	The application of these cost principles is based on the fundamental premises that: (a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices. (b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award. (c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award. (d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award. (e) In reviewing, negotiating and approving cost allocation plans or indirect	Y	Y

1,337	§200.401 Application	Federal	Statute	(a) General. These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to: (1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees. (2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award. (3) Fixed amount awards. See also Subpart A—Acronyms and Definitions, §§200.45 Fixed amount awards and 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts. (4) Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles). (5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred. (b) Federal Contract. Where a Federal contract awarded to a non-Federal	Y	Y
1,338	Basic Considerations §200.402 Composition of costs	Federal	Statute	Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.	N	N

1,339	§200.403 Factors affecting allowability of costs	Federal	Statute	Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards: (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles. (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items. (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity. (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost. (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part. (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).	Y	Y

1,340	§200.404 Reasonable costs	Federal	Statute	A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to: (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award. (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award. (c) Market prices for comparable goods or services for the geographic area. (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government. (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.	Y	Y

1,341	§200.405 Allocable costs	Federal	Statute	(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost: (1) Is incurred specifically for the Federal award; (2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and (3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart. (b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs. (c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-	Y	Y
1,342	§200.406 Applicable credits	Federal	Statute	(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate. (b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§200.436 Depreciation and 200.468 Specialized service facilities, for areas of potential application in the matter of Federal financing of activities.)	N	N

1,343	§200.407 Prior written approval (prior approval)	Federal	Statute	Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part: (a) §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5); (b) §200.306 Cost sharing or matching; (c) §200.307 Program income; (d) §200.308 Revision of budget and program plans; (e) §200.311 Real property; (f) §200.313 Equipment;	N	N
1,344	§200.408 Limitation on allowance of costs	Federal	Statute	The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.	N	N

1,345	§200.409 Special considerations	Federal	Statute	In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart, are only applicable to certain types of non-Federal entities, as specified in the following sections: (a) Direct and Indirect (F&A) Costs (§§200.412 Classification of costs through 200.415 Required certifications) of this subpart; (b) Special Considerations for States, Local Governments and Indian Tribes (§§200.416 Cost allocation plans and indirect cost proposals and 200.417 Interagency service) of this subpart; and (c) Special Considerations for Institutions of Higher Education (§§200.418 Costs incurred by states and local governments and 200.419 Cost accounting standards and disclosure statement) of this subpart.	N	N
1,346	§200.410 Collection of unallowable costs	Federal	Statute	Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.	N	N

1,347	§200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs	Federal	Statute	(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that: (1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or (2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional). (b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted. (c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.	N	N
1,348	Direct and Indirect (F&A) Costs §200.412 Classification of costs	Federal	Statute	There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.	N	N

1,349	§200.413 Direct costs	Federal	Statute	(a) General. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also §200.405 Allocable costs. (b) Application to Federal awards. Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations. (c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met: (1) Administrative or clerical services are integral to a project or activity; (2) Individuals involved can be specifically identified with the project or	Y	Y

1,350	§200.414 Indirect (F&A) costs	Federal	Statute	(a) Facilities and Administration Classification. For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: “Facilities” and “Administration.” “Facilities” is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. “Administration” is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the “Administration” category; for institutions of higher education, they are included in the “Facilities” category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) paragraph C. 11. Major nonprofit organizations are those which receive more than $10 million dollars in direct Federal funding. (b) Diversity of nonprofit organizations. Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However,	Y	Y

1,351	§200.415 Required certifications	Federal	Statute	Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).” (b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following: (1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX. The	Y	Y

1,352	Special Considerations for States, Local Governments and Indian Tribes §200.416 Cost allocation plans and indirect cost proposals	Federal	Statute	(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. (b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include: (1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs. (c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices IV, V and VI to this part.	Y	Y
1,353	§200.417 Interagency service	Federal	Statute	The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans.	N	N

1,354	Special Considerations for Institutions of Higher Education §200.418 Costs incurred by states and local governments	Federal	Statute	Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following: (a) The costs meet the requirements of §§200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs, of this subpart; (b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and (c) The costs are not otherwise borne directly or indirectly by the Federal Government.	N	N
1,355	§200.419 Cost accounting standards and disclosure statement	Federal	Statute	(a) An IHE that receives aggregate Federal awards totaling $50 million or more in Federal awards subject to this part in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30). (b) Disclosure statement. An IHE that receives aggregate Federal awards totaling $50 million or more subject to this part during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs). With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received $50 million or more in Federal awards. (1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit. (2) An IHE is responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. An IHE must file amendments to the DS-2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified	N	N

1,356	General Provisions for Selected Items of Cost §200.420 Considerations for selected items of cost	Federal	Statute	This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II. Basic Considerations of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in §200.403 Factors affecting allowability of costs must be applied in determining allowability. See also §200.102 Exceptions.	N	N
1,357	§200.421 Advertising and public relations	Federal	Statute	(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like. (b) The only allowable advertising costs are those which are solely for: (1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also §200.463 Recruiting costs); (2) The procurement of goods and services for the performance of a Federal award; (3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or (4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award. (c) The term “public relations” includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.	N	N
1,358	§200.422 Advisory councils	Federal	Statute	Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See §200.444 General costs of government, applicable to states, local governments and Indian tribes.	N	N

1,359	§200.423 Alcoholic beverages	Federal	Statute	Costs of alcoholic beverages are unallowable.	N	N
1,360	§200.424 Alumni/ae activities	Federal	Statute	Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.	N	N
1,361	§200.425 Audit services	Federal	Statute	(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable: (1) Any costs when audits required by the Single Audit Act and Subpart F—Audit Requirements of this part have not been conducted or have been conducted but not in accordance therewith; and (2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and Subpart F—Audit Requirements of this part because its expenditures under Federal awards are less than $750,000 during the non-Federal entity's fiscal year. (b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal. (c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with Subpart D—Post Federal Award Requirements of this part, §§200.330 Subrecipient and contractor determinations through 200.332 Fixed Amount Subawards) who are exempted from the requirements of the Single Audit Act and Subpart F—Audit Requirements of this part. This cost is allowable only if the agreed-upon-procedures engagements are:	N	N
1,362	§200.426 Bad debts	Federal	Statute	Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also §200.428 Collections of improper payments.	N	N

1,363	§200.427 Bonding costs	Federal	Statute	(a) Bonding costs arise when the Federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials. (b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable. (c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.	N	N
1,364	§200.428 Collections of improper payments	Federal	Statute	The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in §200.305 Payment.	N	N
1,365	§200.429 Commencement and convocation costs	Federal	Statute	For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph (B)(9) Student Administration and Services, as student activity costs.	N	N

1,366	§200.430 Compensation—personal services	Federal	Statute	(a) General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in §200.431 Compensation—fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees: (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities; (2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and (3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable. (b) Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity,	N	N

1,367	§200.431 Compensation—fringe benefits	Federal	Statute	(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity. (b) Leave. The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met: (1) They are provided under established written leave policies; (2) The costs are equitably allocated to all related activities, including Federal awards; and, (3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees. (i) When a non-Federal entity uses the cash basis of accounting, the cost of	N	N
1,368	§200.432 Conferences	Federal	Statute	A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§200.438 Entertainment costs, 200.456 Participant support costs, 200.474 Travel costs, and 200.475 Trustees.	Y	Y

1,369	§200.433 Contingency provisions	Federal	Statute	(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included. (b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of Subpart D of this part and 200.403 Factors affecting allowability of costs); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records. (c) Payments made by the Federal awarding agency to the non-Federal entity's “contingency reserve” or any similar payment made for events the	N	N

1,370	§200.434 Contributions and donations	Federal	Statute	(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable. (b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see §200.306 Cost sharing or matching). Depreciation on donated assets is permitted in accordance with §200.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements. (c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of §200.306 Cost sharing or matching. (d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services. (e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of	N	N

1,371	§200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements	Federal	Statute	(a) Definitions for the purposes of this section. (1) Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere. (2) Costs include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding. (3) Fraud means: (i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) Acts which violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)). (4) Penalty does not include restitution, reimbursement, or compensatory damages.	N	N

1,372	§200.436 Depreciation	Federal	Statute	(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation. (b) The allocation for depreciation must be made in accordance with Appendices III through IX. (c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the purpose of computing depreciation, the acquisition cost will exclude: (1) The cost of land; (2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;	N	N
1,373	§200.437 Employee health and welfare costs	Federal	Statute	a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable. (b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations. (c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only: (1) Where the non-Federal entity can demonstrate unusual circumstances; and (2) With the approval of the cognizant agency for indirect costs.	Y	Y

1,374	§200.438 Entertainment costs	Federal	Statute	Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.	N	N
1,375	§200.439 Equipment and other capital expenditures	Federal	Statute	(a) See §§200.13 Capital expenditures, 200.33 Equipment, 200.89 Special purpose equipment, 200.48 General purpose equipment, 200.2 Acquisition cost, and 200.12 Capital assets. (b) The following rules of allowability must apply to equipment and other capital expenditures: (1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity. (2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity. (3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See §200.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also §200.465 Rental costs of real property and equipment. (4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which	N	N

1,376	§200.440 Exchange rates	Federal	Statute	(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act. (b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the Federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.	N	N
1,377	§200.441 Fines, penalties, damages and other settlements	Federal	Statute	Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also §200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.	N	N
1,378	§200.442 Fund raising and investment management costs	Federal	Statute	(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in §200.460 Proposal costs. (b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part. (c) Costs related to the physical custody and control of monies and securities are allowable. (d) Both allowable and unallowable fund raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in §200.413 Direct costs.	Y	Y

1,379	§200.443 Gains and losses on disposition of depreciable assets	Federal	Statute	(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property. (b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions: (1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§200.436 Depreciation and 200.439 Equipment and other capital expenditures. (2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item. (3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in §200.447 Insurance and indemnification. (4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.	N	N

1,380	§200.444 General costs of government	Federal	Statute	(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in §200.474 Travel costs). Unallowable costs include: (1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe; (2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction; (3) Costs of the judicial branch of a government; (4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in §200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements); and (5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation. (b) For Indian tribes and Councils of Governments (COGs) (see §200.64 Local	N	N
1,381	§200.445 Goods or services for personal use	Federal	Statute	(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees. (b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency.	N	N

1,382	§200.446 Idle facilities and idle capacity	Federal	Statute	(a) As used in this section the following terms have the meanings set forth in this section: (1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity. (2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs. (3) Idle capacity means the unused capacity of partially used facilities. It is the difference between: (i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and; (ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved. (4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety	N	N

1,383	§200.447 Insurance and indemnification	Federal	Statute	(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable. (b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations: (1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice. (2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs. (3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees. (4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see §200.431 Compensation—fringe benefits). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable. (5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or	N	N

1,384	§200.448 Intellectual property	Federal	Statute	(a) Patent costs. (1) The following costs related to securing patents and copyrights are allowable: (i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures; (ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and (iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also §200.459 Professional service costs). (2) The following costs related to securing patents and copyrights are unallowable: (i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award; (ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal	N	N

1,385	§200.449 Interest	Federal	Statute	(a) General. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section. (b)(1) Capital assets is defined as noted in §200.12 Capital assets. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP. (2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable. (c) Conditions for all non-Federal entities. (1) The non-Federal entity uses the capital assets in support of Federal awards; (2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party. (3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a	N	N

1,386	§200.450 Lobbying	Federal	Statute	(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying” published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying” and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996). (b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter. (c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs: (1) Costs associated with the following activities are unallowable: (i) Attempts to influence the outcomes of any Federal, state, or local	N	N
1,387	§200.451 Losses on other awards or contracts	Federal	Statute	Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.	N	N
1,388	§200.452 Maintenance and repair costs	Federal	Statute	Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see §200.439 Equipment and other capital expenditures). These costs are only allowable to the extent not paid through rental or other agreements.	N	N

1,389	§200.453 Materials and supplies costs, including costs of computing devices	Federal	Statute	(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable. (b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs. (c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award. (d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.	N	N
1,390	§200.454 Memberships, subscriptions, and professional activity costs	Federal	Statute	(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable. (b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable. (c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity. (d) Costs of membership in any country club or social or dining club or organization are unallowable. (e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also §200.450 Lobbying.	N	N
1,391	§200.455 Organization costs	Federal	Statute	Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency.	N	N
1,392	§200.456 Participant support costs	Federal	Statute	Participant support costs as defined in §200.75 Participant support costs are allowable with the prior approval of the Federal awarding agency.	N	N

1,393	§200.457 Plant and security costs	Federal	Statute	Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to §200.439 Equipment and other capital expenditures.	N	N
1,394	§200.458 Pre-award costs	Federal	Statute	Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.	N	N
1,395	§200.459 Professional service costs	Federal	Statute	(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under §200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements. (b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant: (1) The nature and scope of the service rendered in relation to the service required. (2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area. (3) The past pattern of such costs, particularly in the years prior to Federal awards. (4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).	N	N

1,396	§200.460 Proposal costs	Federal	Statute	Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.	N	N
1,397	§200.461 Publication and printing costs	Federal	Statute	(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity. (b) Page charges for professional journal publications are allowable where: (1) The publications report work supported by the Federal Government; and (2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award. (3) The non-Federal entity may charge the Federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award.	N	N
1,398	§200.462 Rearrangement and reconversion costs	Federal	Statute	(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity. (b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.	N	N

1,399	§200.463 Recruiting costs	Federal	Statute	(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of “help wanted” advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable. (b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable. (c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also §200.464 Relocation costs of employees.	Y	Y

1,400	§200.464 Relocation costs of employees	Federal	Statute	(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that: (1) The move is for the benefit of the employer. (2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer. (3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses. (b) Allowable relocation costs for current employees are limited to the following: (1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location. (2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.	N	N

1,401	§200.465 Rental costs of real property and equipment	Federal	Statute	(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available. (b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance. (c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between: (1) Divisions of the non-Federal entity; (2) The non-Federal entity under common control through common officers, directors, or members; and (3) The non-Federal entity and a director, trustee, officer, or key employee	N	N

1,402	§200.466 Scholarships and student aid costs	Federal	Statute	(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that: (1) The individual is conducting activities necessary to the Federal award; (2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and (3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program; (4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and (5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.	Y	Y
1,403	§200.467 Selling and marketing costs	Federal	Statute	Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under §200.421 Advertising and public relations.) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.	N	N

1,404	§200.468 Specialized service facilities	Federal	Statute	(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraphs (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under §200.406 Applicable credits. (b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that: (1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and (2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under applied costs of the previous period(s). (c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs. (d) Under some extraordinary circumstances, where it is in the best interest	N	N
1,405	§200.469 Student activity costs	Federal	Statute	Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.	N	N

1,406	§200.470 Taxes (including Value Added Tax).	Federal	Statute	(a) For states, local governments and Indian tribes: (1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. (2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable. (3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof. (b) For nonprofit organizations and IHEs: (1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for: (i) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an	Y	Y

1,407	§200.471 Termination costs	Federal	Statute	Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations. (a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work. (b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.	N	N
1,408	§200.472 Training and education costs	Federal	Statute	The cost of training and education provided for employee development is allowable.	N	N
1,409	§200.473 Transportation costs	Federal	Statute	Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.	N	N

1,410	§200.474 Travel costs	Federal	Statute	(a) General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of §200.444 General costs of government, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award. (b) Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that: (1) Participation of the individual is necessary to the Federal award; and (2) The costs are reasonable and consistent with non-Federal entity's	N	N
1,411	§200.475 Trustees	Federal	Statute	Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also §200.474 Travel costs.	N	N
1,412	Subpart F—Audit Requirements General §200.500 Purpose	Federal	Statute	This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.	N	N

1,413	Audits §200.501 Audit requirements	Federal	Statute	(a) Audit required. A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part. (b) Single audit. A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section. (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit. (d) Exemption when Federal awards expended are less than $750,000. A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit	Y	Y

1,414	§200.502 Basis for determining Federal awards expended	Federal	Statute	(a) Determining Federal awards expended. The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force. (b) Loan and loan guarantees (loans). Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section: (1) Value of new loans made or received during the audit period; plus (2) Beginning of the audit period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus	Y	Y

1,415	§200.503 Relation to other audit requirements	Federal	Statute	(a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information. (b) Notwithstanding subsection (a), a Federal agency, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors. (c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or	Y	Y
1,416	§200.504 Frequency of audits	Federal	Statute	Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both years within the biennial period. (a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period. (b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.	Y	Y
1,417	§200.505 Sanctions	Federal	Statute	In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in §200.338 Remedies for noncompliance.	N	N
1,418	§200.506 Audit costs	Federal	Statute	See §200.425 Audit services.		

1,419	§200.507 Program-specific audits	Federal	Statute	(a) Program-specific audit guide available. In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including Federal awarding agency contact information and a Web site where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit. (b) Program-specific audit guide not available. (1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit. (2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of §200.511 Audit findings follow-up, paragraph (b), and a corrective action plan consistent with the requirements of §200.511 Audit findings follow-up, paragraph (c). (3) The auditor must:	Y	Y
1,420	Auditees §200.508 Auditee responsibilities	Federal	Statute	The auditee must: (a) Procure or otherwise arrange for the audit required by this part in accordance with §200.509 Auditor selection, and ensure it is properly performed and submitted when due in accordance with §200.512 Report submission. (b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with §200.510 Financial statements. (c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with §200.511 Audit findings follow-up, paragraph (b) and §200.511 Audit findings follow-up, paragraph (c), respectively. (d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.	N	N

1,421	§200.509 Auditor selection	Federal	Statute	(a) Auditor procurement. In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§200.317 Procurement by states through 20.326 Contract provisions of Subpart D- Post Federal Award Requirements of this part or the FAR (48 CFR part 42), as applicable. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, or the FAR (48 CFR part 42), as applicable. (b) Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the	Y	Y

1,422	§200.510 Financial statements	Federal	Statute	(a) Financial statements. The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with §200.514 Scope of audit, paragraph (a) and prepare separate financial statements. (b) Schedule of expenditures of Federal awards. The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with §200.502 Basis for determining Federal awards expended. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must: (1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual	Y	Y

1,423	§200.511 Audit findings follow-up	Federal	Statute	(a) General. The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under §200.516 Audit findings, paragraph (c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS. (b) Summary schedule of prior audit findings. The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section. (1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken. (2) When audit findings were not corrected or were only partially corrected,	Y	Y

1,424	§200.512 Report submission	Federal	Statute	(a) General. (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day. (2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information. (b) Data Collection. The FAC is the repository of record for Subpart F—Audit Requirements of this part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC. (1) The auditee must submit required data elements described in Appendix X to Part 200—Data Collection Form (Form SF-SAC), which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by	Y	Y

1,425	Federal Agencies §200.513 Responsibilities	Federal	Statute	(a)(1) Cognizant agency for audit responsibilities. A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of direct funding to a non-Federal entity unless OMB designates a specific cognizant agency for audit. (2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2009, 2014, 2019 and every fifth year thereafter. For example, audit cognizance for periods ending in 2011 through 2015 will be determined based on Federal awards expended in 2009. (3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must: (i) Provide technical audit advice and liaison assistance to auditees and auditors.	N	N

1,426	Auditors of audit §200.514 Scope	Federal	Statute	(a) General. The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period. (b) Financial statements. The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole. (c) Internal control. (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).	Y	Y

1,427	§200.515 Audit reporting	Federal	Statute	The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following: (a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements as a whole. (b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section. (c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and	Y	Y

1,428	§200.516 Audit findings	Federal	Statute	(a) Audit findings reported. The auditor must report the following as audit findings in a schedule of findings and questioned costs: (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement. (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement. (3) Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned	Y	Y
1,429	§200.517 Audit documentation	Federal	Statute	(a) Retention of audit documentation. The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports. (b) Access to audit documentation. Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.	Y	Y

1,430	§200.518 Major program determination	Federal	Statute	(a) General. The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (h) of this section must be followed. (b) Step one.(1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1): Total Federal awards expended Type A/B threshold Equal to or exceed $750,000 but less than or equal to $25 million $750,000. Exceed $25 million but less than or equal to $100 million Total Federal awards expended times .03. Exceed $100 million but less than or equal to $1 billion $3 million. Exceed $1 billion but less than or equal to $10 billion Total Federal awards expended times .003. Exceed $10 billion but less than or equal to $20 billion $30 million. Exceed $20 billion Total Federal awards expended times .0015. (2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.	N	N

1,431	§200.519 Criteria for Federal program risk	Federal	Statute	(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity. (b) Current and prior audit experience. (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs. (i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity. (ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.	N	N

1,432	§200.520 Criteria for a low-risk auditee	Federal	Statute	An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with §200.518 Major program determination. (a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in §200.512 Report submission. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee. (b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified. (c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. (d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern. (e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:	N	N

1,433	Management Decisions §200.521 Management decision	Federal	Statute	(a) General. The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS. (b) Federal agency. As provided in §200.513 Responsibilities, paragraph (a)(7), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in §200.513 Responsibilities, paragraph (c)(3), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities. (c) Pass-through entity. As provided in §200.331 Requirements for pass-through entities, paragraph (d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.	Y	Y

1,434	Appendix I to Part 200—Full Text of Notice of Funding Opportunity	Federal	Statute	The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is a Federal awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that a Federal awarding agency would include in that section of an actual announcement. A Federal awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if a Federal awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements. Similarly, when this format calls for a type of information to be in a particular section, a Federal awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, a Federal awarding agency may want to include Section A information about the types of non-Federal entities who are eligible to apply. The format specifies a standard location for that information in	Y	Y

1,435	Appendix I to Part 200—Full Text of Notice of Funding Opportunity continued...	Federal	Statute	D. Application and Submission Information 1. Address to Request Application Package—Required. Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number. 2. Content and Form of Application Submission—Required. This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them. This section should specifically address content and form or format requirements for: i. Pre-applications, letters of intent, or white papers required or encouraged	Y	Y

1,436	Appendix I to Part 200—Full Text of Notice of Funding Opportunity continued...	Federal	Statute	E. Application Review Information 1. Criteria—Required. This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned). If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after	Y	Y

1,437	Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards	Federal	Statute	In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable. (A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment	Y	Y

1,438	Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)	Federal	Statute	A. General This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs. 1. Major Functions of an Institution Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section: a. Instruction means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research. (1) Sponsored instruction and training means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major	Y	Y

1,439	Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) continued...	Federal	Statute	B. Identification and Assignment of Indirect (F&A) Costs 1. Definition of Facilities and Administration See §200.414 Indirect (F&A) costs which provides the basis for these indirect cost requirements. 2. Depreciation a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §200.436 Depreciation. b. In the absence of the alternatives provided for in Section A.2.d, Selection of distribution method, the expenses included in this category must be allocated in the following manner: (1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function. (2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms. (3) Depreciation on buildings, capital improvements and equipment related	Y	Y

1,440	Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) continued...	Federal	Statute	7. Sponsored Projects Administration a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations. b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects. c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.	Y	Y

1,441	Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) continued...	Federal	Statute	6. Provisional and Final Rates for Indirect (F&A) Costs Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved. 7. Fixed Rates for the Life of the Sponsored Agreement Except as provided in paragraph (c)(1) of §200.414 Indirect (F&A) costs, Federal agencies must use the negotiated rates, must paragraph (b)(1) for indirect (F&A) costs in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. "Negotiated rates" per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend	Y	Y

1,442	Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) continued...	Federal	Statute	E. Documentation Requirements The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB Web site here: http://www.whitehouse.gov/omb/grants_forms. F. Certification 1. Certification of Charges To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729-3733 and 3801-3812)”. 2. Certification of Indirect (F&A) Costs a. Policy. Cognizant agencies must not accept a proposed indirect cost rate unless such costs have been certified by the educational institution using the Certificate of indirect (F&A) Costs set forth in subsection F.2.c	Y	Y

1,443	Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations	Federal	Statute	A. General 1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in §200.413 Direct costs paragraph (d) of this Part. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost. “Major nonprofit organizations” are defined in §200.414 Indirect (F&A) costs. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix. B. Allocation of Indirect Costs and Determination of Indirect Cost Rates 1. General a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix. b. If an organization has several major functions which benefit from its	Y	Y

1,444	Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations Continued...	Federal	Statute	3. Multiple Allocation Base Method a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix. b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: “Facilities” and “Administration,” as described in section A.3 of this Appendix. The indirect cost pools are defined as follows: (1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §200.436 Depreciation. (2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with §200.449 Interest.	Y	Y

1,445	Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations Continued...	Federal	Statute	5. Special Indirect Cost Rates In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material. C. Negotiation and Approval of Indirect Cost Rates 1. Definitions As used in this section, the following terms have the meanings set forth in	Y	Y

1,446	Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans	Federal	Statute	A. General 1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards. 2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled “A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government.” A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their Web site at https://rates.psc.gov. B. Definitions 1. Agency or operating agency means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.	N	N

1,447	Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans Continued...	Federal	Statute	F. Negotiation and Approval of Central Service Plans 1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities: Department of Health and Human Services—Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts. Department of the Interior—Indian tribal governments, territorial governments, and state and local park and recreational districts. Department of Labor—State and local labor departments. Department of Education—School districts and state and local education	Y	Y

1,448	Appendix VI to Part 200—Public Assistance Cost Allocation Plans	Federal	Statute	A. General Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant. B. Definitions 1. State public assistance agency means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR Part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency. 2. State public assistance agency costs means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and	Y	Y

1,449	Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals	Federal	Statute	A. General 1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost. 2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans) and not otherwise treated as direct costs. 3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled “A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation	Y	Y

1,450	Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals Continued...	Federal	Statute	4. Special Indirect Cost Rates a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and (2) the Federal award to which the rate would apply is material in amount. b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a “restricted rate” is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.	Y	Y

1,451	Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200	Federal	Statute	1. Advance Technology Institute (ATI), Charleston, South Carolina 2. Aerospace Corporation, El Segundo, California 3. American Institutes of Research (AIR), Washington, DC 4. Argonne National Laboratory, Chicago, Illinois 5. Atomic Casualty Commission, Washington, DC 6. Battelle Memorial Institute, Headquartered in Columbus, Ohio 7. Brookhaven National Laboratory, Upton, New York 8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts 9. CNA Corporation (CNAC), Alexandria, Virginia 10. Environmental Institute of Michigan, Ann Arbor, Michigan 11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia 12. Hanford Environmental Health Foundation, Richland, Washington	N	N
1,452	Appendix IX to Part 200—Hospital Cost Principles	Federal	Statute	Based on initial feedback, OMB proposes to establish a review process to consider existing hospital cost determine how best to update and align them with this Part. Until such time as revised guidance is proposed and implemented for hospitals, the existing principles located at 45 CFR Part 75 Appendix E, entitled “Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals,” remain in effect.	N	N
1,453	Appendix X to Part 200—Data Collection Form (Form SF-SAC)	Federal	Statute	The Data Collection Form SF-SAC is available on the FAC Web site.	N	N
1,454	Appendix XI to Part 200—Compliance Supplement	Federal	Statute	The compliance supplement is available on the OMB Web site: (e.g. for 2013 here http://www.whitehouse.gov/omb/circulars/)	N	N
1,455	PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED	Federal	Statute			

1,456	Subpart A—Improving Basic Programs Operated by Local Educational Agencies Standards and Assessments §200.1 State responsibilities for developing challenging academic standards.	Federal	Statute	(a) Academic standards in general. A State must develop challenging academic content and student academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out subpart A of this part. These academic standards must— (1) Be the same academic content and academic achievement standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part, except as provided in paragraphs (d) and (e) of this section, which apply only to the State's academic achievement standards; (2) Include the same knowledge and skills expected of all students and the same levels of achievement expected of all students, except as provided in paragraphs (d) and (e) of this section; and (3) Include at least mathematics, reading/language arts, and, beginning in the 2005-2006 school year, science, and may include other subjects determined by the State. (b) Academic content standards. (1) The challenging academic content standards required under paragraph (a) of this section must— (i) Specify what all students are expected to know and be able to do; (ii) Contain coherent and rigorous content; and	Y	Y

1,457	§200.2 State responsibilities for assessment	Federal	Statute	(a)(1) Each State, in consultation with its LEAs, must implement a system of high-quality, yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts and, beginning in the 2007-08 school year, science. (2)(i) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging academic content and student academic achievement standards. (ii) If a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments. (b) The assessment system required under this section must meet the following requirements: (1) Be the same assessment system used to measure the achievement of all students in accordance with §200.3 or §200.4. (2) Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency. (3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and	Y	Y

1,458	§200.3 Designing State Academic Assessment Systems	Federal	Statute	(a)(1) For each grade and subject assessed, a State's academic assessment system must— (i) Address the depth and breadth of the State's academic content standards under §200.1(b); (ii) Be valid, reliable, and of high technical quality; (iii) Express student results in terms of the State's student academic achievement standards; and (iv) Be designed to provide a coherent system across grades and subjects. (2) A State may include in its academic assessment system under §200.2 either or both— (i) Criterion-referenced assessments; and (ii) Assessments that yield national norms, provided that, if the State uses only assessments referenced against national norms at a particular grade, those assessments— (A) Are augmented with additional items as necessary to measure accurately the depth and breadth of the State's academic content standards; and	Y	Y

1,459	§200.4 State law exception	Federal	Statute	(a) If a State provides satisfactory evidence to the Secretary that neither the State educational agency (SEA) nor any other State government official, agency, or entity has sufficient authority under State law to adopt academic content standards, student academic achievement standards, and academic assessments applicable to all students enrolled in the State's public schools, the State may meet the requirements under §§200.1 and 200.2 by— (1) Adopting academic standards and academic assessments that meet the requirements of §§200.1 and 200.2 on a Statewide basis and limiting their applicability to students served under subpart A of this part; or (2) Adopting and implementing policies that ensure that each LEA in the State that receives funds under subpart A of this part will adopt academic standards and academic assessments aligned with those standards that— (i) Meet the requirements in §§200.1 and 200.2; and (ii) Are applicable to all students served by the LEA. (b) A State that qualifies under paragraph (a) of this section must— (1) Establish technical criteria for evaluating whether each LEA's— (i) Academic content and student academic achievement standards meet the requirements in §200.1; and	Y	Y

1,460	§200.5 Timeline for assessments	Federal	Statute	(a) Reading/language arts and mathematics. (1) Through the 2004-2005 school year, a State must administer the assessments required under §200.2 at least once during— (i) Grades 3 through 5; (ii) Grades 6 through 9; and (iii) Grades 10 through 12. (2) Except as provided in paragraph (a)(3) of this section, beginning no later than the 2005-2006 school year, a State must administer both the reading/language arts and mathematics assessments required under §200.2— (i) In each of grades 3 through 8; and (ii) At least once in grades 10 through 12. (3) The Secretary may extend, for one additional year, the timeline in paragraph (a)(2) of this section if a State demonstrates that— (i) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—	Y	Y

1,461	§200.6 Inclusion of all students	Federal	Statute	A State's academic assessment system required under §200.2 must provide for the participation of all students in the grades assessed in accordance with this section. (a) Students eligible under IDEA and Section 504—(1) Appropriate accommodations. (i) A State's academic assessment system must provide— (A) For each student with a disability, as defined under section 602(3) of the IDEA, appropriate accommodations that the student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with §200.1(b)(2), (b)(3), and (c); and (B) For each student covered under section 504 of the Rehabilitation Act of 1973, as amended (Section 504), appropriate accommodations that the student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with §200.1(b)(2), (b)(3), and (c). (ii) A State must— (A) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with	Y	Y

1,462	§200.7 Disaggregation of data	Federal	Statute	(a) Statistically reliable information. (1) A State may not use disaggregated data for one or more subgroups under §200.2(b)(10) to report achievement results under section 1111(h) of the Act or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information. (2)(i) Based on sound statistical methodology, each State must determine the minimum number of students sufficient to— (A) Yield statistically reliable information for each purpose for which disaggregated data are used; and (B) Ensure that, to the maximum extent practicable, all student subgroups in §200.13(b)(7)(ii) (economically disadvantaged students; students from major racial and ethnic groups; students with disabilities as defined in section 9101(5) of the Act; and students with limited English proficiency as defined in section 9101(25) of the Act) are included, particularly at the school level, for purposes of making accountability determinations. (ii) Each State must revise its Consolidated State Application Accountability Workbook under section 1111 of the Act to include— (A) An explanation of how the State's minimum group size meets the requirements of paragraph (a)(2)(i) of this section;	Y	Y

1,463	§200.8 Assessment reports	Federal	Statute	(a) Student reports. A State's academic assessment system must produce individual student interpretive, descriptive, and diagnostic reports that— (1)(i) Include information regarding achievement on the academic assessments under §200.2 measured against the State's student academic achievement standards; and (ii) Help parents, teachers, and principals to understand and address the specific academic needs of students; and (2) Are provided to parents, teachers, and principals— (i) As soon as is practicable after the assessment is given; (ii) In an understandable and uniform format, including an alternative format (e.g., Braille or large print) upon request; and (iii) To the extent practicable, in a language that parents can understand. (b) Itemized score analyses for LEAs and schools. (1) A State's academic assessment system must produce and report to LEAs and schools itemized score analyses, consistent with §200.2(b)(4), so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students.	Y	Y
1,464	§200.9 Deferral of assessments	Federal	Statute	(a) A State may defer the start or suspend the administration of the assessments required under §200.2 that were not required prior to January 8, 2002 for one year for each year for which the amount appropriated for State assessment grants under section 6113(a)(2) of the Act is less than the trigger amount in section 1111(b)(3)(D) of the Act. (b) A State may not cease the development of the assessments referred to in paragraph (a) of this section even if sufficient funds are not appropriated under section 6113(a)(2) of the Act.	Y	Y

1,465	§200.10 Applicability of a State's academic assessments to private schools and private school students.	Federal	Statute	(a) Nothing in §200.1 or §200.2 requires a private school, including a private school whose students receive services under subpart A of this part, to participate in a State's academic assessment system. (b)(1) If an LEA provides services to eligible private school students under subpart A of this part, the LEA must, through timely consultation with appropriate private school officials, determine how services to eligible private school students will be academically assessed and how the results of that assessment will be used to improve those services. (2) The assessments referred to in paragraph (b)(1) of this section may be the State's academic assessments under §200.2 or other appropriate academic assessments.	Y	Y
1,466	Participation in National Assessment of Educational Progress (NAEP) §200.11 Participation in NAEP	Federal	Statute	(a) State participation. Beginning in the 2002-2003 school year, each State that receives funds under subpart A of this part must participate in biennial State academic assessments of fourth and eighth grade reading and mathematics under the State National Assessment of Educational Progress (NAEP), if the Department pays the costs of administering those assessments. (b) Local participation. In accordance with section 1112(b)(1)(F) of the Elementary and Secondary Education Act of 1965 (ESEA), and notwithstanding section 411(d)(1) of the National Education Statistics Act of 1994, an LEA that receives funds under subpart A of this part must participate, if selected, in the State-NAEP assessments referred to in paragraph (a) of this section. (c) Report cards. Each State and LEA must report on its annual State and LEA report card, respectively, the most recent available academic achievement results in grades four and eight on the State's NAEP reading and mathematics assessments under paragraph (a) of this section. The report cards must include— (1) The percentage of students at each achievement level reported on the NAEP in the aggregate and, for State report cards, disaggregated for each subgroup described in §200.13(b)(7)(ii); and (2) The participation rates for students with disabilities and for limited	Y	Y

1,467	State Accountability System §200.12 Single State accountability system	Federal	Statute	(a)(1) Each State must demonstrate in its State plan that the State has developed and is implementing, beginning with the 2002-2003 school year, a single, statewide accountability system. (2) The State's accountability system must be effective in ensuring that all public elementary and secondary schools and LEAs in the State make AYP as defined in §§200.13 through 200.20. (b) The State's accountability system must— (1) Be based on the State's academic standards under §200.1, academic assessments under §200.2, and other academic indicators under §200.19; (2) Take into account the achievement of all public elementary and secondary school students; (3) Be the same accountability system the State uses for all public elementary and secondary schools and all LEAs in the State; and (4) Include sanctions and rewards that the State will use to hold public elementary and secondary schools and LEAs accountable for student achievement and for making AYP, except that the State is not required to subject schools and LEAs not participating under subpart A of this part to the requirements of section 1116 of the ESEA.	Y	Y

1,468	Adequate Yearly Progress (AYP) §200.13 Adequate yearly progress in general	Federal	Statute	(a) Each State must demonstrate in its State plan what constitutes AYP of the State and of all public schools and LEAs in the State— (1) Toward enabling all public school students to meet the State's student academic achievement standards; while (2) Working toward the goal of narrowing the achievement gaps in the State, its LEAs, and its public schools. (b) A State must define adequate yearly progress, in accordance with §§200.14 through 200.20, in a manner that— (1) Applies the same high standards of academic achievement to all public school students in the State, except as provided in paragraph (c) of this section; (2) Is statistically valid and reliable; (3) Results in continuous and substantial academic improvement for all students; (4) Measures the progress of all public schools, LEAs, and the State based primarily on the State's academic assessment system under §200.2; (5) Measures progress separately for reading/language arts and for	Y	Y
1,469	Appendix to §200.13—When May a State or LEA Exceed the 1% and 2% Caps?	Federal	Statute	The following table provides a summary of the circumstances in which a State or LEA may exceed the 1% and 2% caps described in §200.13. When May a State or LEA Exceed the 1% and 2% Caps? Alternate academic achievement standards—1% cap Modified academic achievement standards—2% cap Alternate and modified academic achievement standards—3% State Not permitted Only if State is below 1% cap, but cannot exceed 3% Not permitted. LEA Only if granted an exception by the SEA Only if LEA is below 1% cap, but cannot exceed 3% Only if granted an exception to the 1% cap by the SEA, and only by the amount of the exception.	Y	Y

1,470	§200.14 Components of Adequate Yearly Progress	Federal	Statute	A State's definition of AYP must include all of the following: (a) A timeline in accordance with §200.15. (b) Starting points in accordance with §200.16. (c) Intermediate goals in accordance with §200.17. (d) Annual measurable objectives in accordance with §200.18. (e) Other academic indicators in accordance with §200.19.	Y	Y
1,471	§200.15 Timeline	Federal	Statute	(a) Each State must establish a timeline for making AYP that ensures that, not later than the 2013-2014 school year, all students in each group described in §200.13(b)(7) will meet or exceed the State's proficient level of academic achievement. (b) Notwithstanding subsequent changes a State may make to its academic assessment system or its definition of AYP under §§200.13 through 200.20, the State may not extend its timeline for all students to reach proficiency beyond the 2013-2014 school year.	Y	Y
1,472	§200.16 Starting points	Federal	Statute	(a) Using data from the 2001-2002 school year, each State must establish starting points in reading/language arts and in mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement. (b) Each starting point must be based, at a minimum, on the higher of the following percentages of students at the proficient level: (1) The percentage in the State of proficient students in the lowest-achieving subgroup of students under §200.13(b)(7)(ii). (2) The percentage of proficient students in the school that represents 20 percent of the State's total enrollment among all schools ranked by the percentage of students at the proficient level. The State must determine this percentage as follows: (i) Rank each school in the State according to the percentage of proficient students in the school. (ii) Determine 20 percent of the total enrollment in all schools in the State. (iii) Beginning with the lowest-ranked school, add the number of students enrolled in each school until reaching the school that represents 20 percent of the State's total enrollment among all schools.	Y	Y

1,473	§200.17 Intermediate goals	Federal	Statute	Each State must establish intermediate goals that increase in equal increments over the period covered by the timeline under §200.15 as follows: (a) The first incremental increase must take effect not later than the 2004-2005 school year. (b) Each following incremental increase must occur in not more than three years.	Y	Y
1,474	§200.18 Annual measurable objectives	Federal	Statute	(a) Each State must establish annual measurable objectives that— (1) Identify for each year a minimum percentage of students that must meet or exceed the proficient level of academic achievement on the State's academic assessments; and (2) Ensure that all students meet or exceed the State's proficient level of academic achievement within the timeline under §200.15. (b) The State's annual measurable objectives— (1) Must be the same throughout the State for each school, each LEA, and each group of students under §200.13(b)(7); and (2) May be the same for more than one year, consistent with the State's intermediate goals under §200.17.	Y	Y

1,475	§200.19 Other academic indicators	Federal	Statute	(a) Elementary and middle schools—(1) Choice of indicator. To determine AYP, consistent with §200.14(e), each State must use at least one other academic indicator for public elementary schools and at least one other academic indicator for public middle schools, such as those in paragraph (c) of this section. (2) Goals. A State may, but is not required to, increase the goals of its other academic indicators over the course of the timeline under §200.15. (3) Reporting. A State and its LEAs must report under section 1111(h) of the Act (annual report cards) performance on the academic indicators for elementary and middle schools at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in §200.13(b)(7)(ii). (4) Determining AYP. A State— (i) Must disaggregate its other academic indicators for elementary and middle schools by each subgroup described in §200.13(b)(7)(ii) for purposes of determining AYP under §200.20(b)(2) (“safe harbor”) and as required under section 1111(b)(2)(C)(vii) of the Act (additional academic indicators under paragraph (c) of this section); but (ii) Need not disaggregate those indicators for determining AYP under §200.20(a)(1)(ii) (meeting the State's annual measurable objectives).	Y	Y
1,476	§200.21 Adequate yearly progress of a State	Federal	Statute	For each State that receives funds under subpart A of this part and under subpart 1 of part A of Title III of the ESEA, the Secretary must, beginning with the 2004-2005 school year, annually review whether the State has— (a)(1) Made AYP as defined by the State in accordance with §§200.13 through 200.20 for each group of students in §200.13(b)(7); and (2) Met its annual measurable achievement objectives under section 3122(a) of the ESEA relating to the development and attainment of English proficiency by limited English proficient students. (b) A State must include all students who were enrolled in schools in the State for a full academic year in reporting on the yearly progress of the State.	Y	Y

1,477	§200.22 National Technical Advisory Council	Federal	Statute	(a) To provide advice to the Department on technical issues related to the design and implementation of standards, assessments, and accountability systems, the Secretary shall establish a National Technical Advisory Council (hereafter referred to as the "National TAC"), which shall be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463, as amended; 5 U.S.C. App.). (b)(1) The members of the National TAC must include persons who have knowledge of and expertise in the design and implementation of educational standards, assessments, and accountability systems for all students, including students with disabilities and limited English proficient students, and experts with technical knowledge related to statistics and psychometrics. (2) The National TAC shall be composed of 10 to 20 members who may meet as a whole or in committees, as the Secretary may determine. (3) The Secretary shall, through a notice published in the Federal Register— (i) Solicit nominations from the public for members of the National TAC; and (ii) Publish the list of members, once selected. (4) The Secretary shall screen nominees for membership on the National TAC for potential conflicts of interest to prevent, to the extent possible, such	N	N
1,478	§§200.23-200.24 [Reserved]	Federal	Statute			

1,479	Schoolwide Programs §200.25 Schoolwide programs in general	Federal	Statute	(a) Purpose. (1) The purpose of a schoolwide program is to improve academic achievement throughout a school so that all students, particularly the lowest-achieving students, demonstrate proficiency related to the State's academic standards under §200.1. (2) The improved achievement is to result from improving the entire educational program of the school. (b) Eligibility. (1) A school may operate a schoolwide program if— (i) The school's LEA determines that the school serves an eligible attendance area or is a participating school under section 1113 of the ESEA; and (ii) For the initial year of the schoolwide program— (A) The school serves a school attendance area in which not less than 40 percent of the children are from low-income families; or (B) Not less than 40 percent of the children enrolled in the school are from low-income families. (2) In determining the percentage of children from low-income families under paragraph (b)(1)(ii) of this section, the LEA may use a measure of poverty that is different from the measure or measures of poverty used by the LEA to identify and rank school attendance areas for eligibility and	Y	Y

1,480	§200.26 Core elements of a schoolwide program	Federal	Statute	(a) Comprehensive needs assessment. (1) A school operating a schoolwide program must conduct a comprehensive needs assessment of the entire school that— (i) Is based on academic achievement information about all students in the school, including all groups under §200.13(b)(7) and migratory children as defined in section 1309(2) of the ESEA, relative to the State's academic standards under §200.1 to— (A) Help the school understand the subjects and skills for which teaching and learning need to be improved; and (B) Identify the specific academic needs of students and groups of students who are not yet achieving the State's academic standards; and (ii) Assesses the needs of the school relative to each of the components of the schoolwide program under §200.28. (2) The comprehensive needs assessment must be developed with the participation of individuals who will carry out the schoolwide program plan. (3) The school must document how it conducted the needs assessment, the results it obtained, and the conclusions it drew from those results. (b) Comprehensive plan. Using data from the comprehensive needs		

1,481	§200.27 Development of a schoolwide program plan	Federal	Statute	(a)(1) A school operating a schoolwide program must develop a comprehensive plan to improve teaching and learning throughout the school. (2) The school must develop the comprehensive plan in consultation with the LEA and its school support team or other technical assistance provider under section 1117 of the ESEA. (3) The comprehensive plan must— (i) Describe how the school will carry out each of the components under §200.28; (ii) Describe how the school will use resources under subpart A of this part and from other sources to carry out the components under §200.28; and (iii) Include a list of State and local programs and other Federal programs under §200.29 that the school will consolidate in the schoolwide program. (b)(1) The school must develop the comprehensive plan, including the comprehensive needs assessment, over a one-year period unless— (i) The LEA, after considering the recommendations of its technical assistance providers under section 1117 of the ESEA, determines that less time is needed to develop and implement the schoolwide program; or	Y	N

1,482	§200.28 Schoolwide program components	Federal	Statute	A schoolwide program must include the following components: (a) Schoolwide reform strategies. The schoolwide program must incorporate reform strategies in the overall instructional program. Those strategies must— (1) Provide opportunities for all students to meet the State's proficient and advanced levels of student academic achievement; (2)(i) Address the needs of all students in the school, particularly the needs of low-achieving students and those at risk of not meeting the State's student academic achievement standards who are members of the target population of any program included in the schoolwide program; and (ii) Address how the school will determine if those needs have been met; (3) Use effective methods and instructional practices that are based on scientifically based research, as defined in section 9101 of the ESEA, and that— (i) Strengthen the core academic program; (ii) Provide an enriched and accelerated curriculum; (iii) Increase the amount and quality of learning time, such as providing an	Y	

1,483	§200.29 Consolidation of funds in a schoolwide program	Federal	Statute	(a)(1) In addition to funds under subpart A of this part, a school may consolidate and use in its schoolwide program Federal funds from any program administered by the Secretary that is included in the most recent notice published for this purpose in the Federal Register. (2) For purposes of §§200.25 through 200.29, the authority to consolidate funds from other Federal programs also applies to services provided to the school with those funds. (b)(1) Except as provided in paragraphs (b)(2) and (c) of this section, a school that consolidates and uses in a schoolwide program funds from any other Federal program administered by the Secretary— (i) Is not required to meet the statutory or regulatory requirements of that program applicable at the school level; but (ii) Must meet the intent and purposes of that program to ensure that the needs of the intended beneficiaries of that program are addressed. (2) A school that chooses to consolidate funds from other Federal programs must meet the requirements of those programs relating to— (i) Health; (ii) Safety;		Y

1,484	LEA and School Improvement §200.30 Local review	Federal	Statute	(a) Each LEA receiving funds under subpart A of this part must use the results of the State assessment system described in §200.2 to review annually the progress of each school served under subpart A of this part to determine whether the school is making AYP in accordance with §200.20. (b)(1) In reviewing the progress of an elementary or secondary school operating a targeted assistance program, an LEA may choose to review the progress of only the students in the school who are served, or are eligible for services, under subpart A of this part. (2) The LEA may exercise the option under paragraph (b)(1) of this section so long as the students selected for services under the targeted assistance program are those with the greatest need for special assistance, consistent with the requirements of section 1115 of the ESEA. (c)(1) To determine whether schools served under subpart A of this part are making AYP, an LEA also may use any additional academic assessments or any other academic indicators described in the LEA's plan. (2)(i) The LEA may use these assessments and indicators— (A) To identify additional schools for school improvement or in need of corrective action or restructuring; and (B) To permit a school to make AYP if, in accordance with §200.20(b), the	Y	Y
1,485	§200.31 Opportunity to review school-level data	Federal	Statute	(a) Before identifying a school for school improvement, corrective action, or restructuring, an LEA must provide the school with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based. (b)(1) If the principal of a school that an LEA proposes to identify for school improvement, corrective action, or restructuring believes, or a majority of the parents of the students enrolled in the school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal may provide supporting evidence to the LEA. (2) The LEA must consider the evidence referred to in paragraph (b)(1) of this section before making a final determination. (c) The LEA must make public a final determination of the status of the school with respect to identification not later than 30 days after it provides the school with the opportunity to review the data on which the proposed identification is based.	Y	N

1,486	§200.32 Identification for school improvement	Federal	Statute	(a)(1)(i) An LEA must identify for school improvement any elementary or secondary school served under subpart A of this part that fails, for two consecutive years, to make AYP as defined under §§200.13 through 200.20. (ii) In identifying schools for improvement, an LEA— (A) May base identification on whether a school did not make AYP because it did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for two consecutive years; but (B) May not limit identification to those schools that did not make AYP only because they did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for the same subgroup under §200.13(b)(7)(ii) for two consecutive years. (2) The LEA must make the identification described in paragraph (a)(1) of this section before the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make AYP for a second consecutive year. (b)(1) An LEA must treat any school that was in the first year of school improvement status on January 7, 2002 as a school that is in the first year of school improvement under §200.39 for the 2002-2003 school year. (2) Not later than the first day of the 2002-2003 school year, the LEA must,	N	N

1,487	§200.33 Identification for corrective action	Federal	Statute	(a) If a school served by an LEA under subpart A of this part fails to make AYP by the end of the second full school year after the LEA has identified the school for improvement under §200.32(a) or (b), or by the end of the first full school year after the LEA has identified the school for improvement under §200.32(c), the LEA must identify the school for corrective action under §200.42. (b) If a school was subject to corrective action on January 7, 2002, the LEA must— (1) Treat the school as a school identified for corrective action under §200.42 for the 2002-2003 school year; and (2) Not later than the first day of the 2002-2003 school year— (i) In accordance with §200.44, provide public school choice to all students in the school; (ii) In accordance with §200.45, make available supplemental educational services to eligible students who remain in the school; and (iii) Take corrective action under §200.42. (c) An LEA may remove from corrective action a school otherwise subject to the requirements of paragraphs (a) or (b) of this section if, on the basis of	Y	N
1,488	§200.34 Identification for restructuring	Federal	Statute	(a) If a school continues to fail to make AYP after one full school year of corrective action under §200.42, the LEA must prepare a restructuring plan for the school and make arrangements to implement the plan. (b) If the school continues to fail to make AYP, the LEA must implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (a) of this section.	N	N

1,489	§200.35 Delay and removal	Federal	Statute	(a) Delay. (1) An LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, under corrective action, or under restructuring if— (i) The school makes AYP for one year; or (ii) The school's failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school. (2) The LEA may not take into account a period of delay under paragraph (a) of this section in determining the number of consecutive years of the school's failure to make AYP. (3) Except as provided in paragraph (b) of this section, the LEA must subject the school to further actions as if the delay never occurred. (b) Removal. If any school identified for school improvement, corrective action, or restructuring makes AYP for two consecutive school years, the LEA may not, for the succeeding school year— (1) Subject the school to the requirements of school improvement, corrective action, or restructuring; or (2) Identify the school for improvement.	Y	N

1,490	§200.36 Communication with parents	Federal	Statute	(a) Throughout the school improvement process, the State, LEA, or school must communicate with the parents of each child attending the school. (b) The State, LEA, or school must ensure that, regardless of the method or media used, it provides the information required by §§200.37 and 200.38 to parents— (1) In an understandable and uniform format, including alternative formats upon request; and (2) To the extent practicable, in a language that parents can understand. (c) The State, LEA, or school must provide information to parents— (1) Directly, through such means as regular mail or e-mail, except that if a State does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and (2) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families. (d) All communications must respect the privacy of students and their families.	Y	Y

1,491	§200.37 Notice of identification for improvement, corrective action, or restructuring	Federal	Statute	(a) If an LEA identifies a school for improvement or subjects the school to corrective action or restructuring, the LEA must, consistent with the requirements of §200.36, promptly notify the parent or parents of each child enrolled in the school of this identification. (b) The notice referred to in paragraph (a) of this section must include the following: (1) An explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary and secondary schools served by the LEA and the SEA involved. (2) The reasons for the identification. (3) An explanation of how parents can become involved in addressing the academic issues that led to identification. (4)(i) An explanation of the parents' option to transfer their child to another public school, including the provision of transportation to the new school, in accordance with §200.44. (ii) The explanation of the parents' option to transfer must include, at a minimum, information on the academic achievement of the school or schools to which the child may transfer.	N	N
1,492	§200.38 Information about action taken	Federal	Statute	(a) An LEA must publish and disseminate to the parents of each student enrolled in the school, consistent with the requirements of §200.36, and to the public information regarding any action taken by a school and the LEA to address the problems that led to the LEA's identification of the school for improvement, corrective action, or restructuring. (b) The information referred to in paragraph (a) of this section must include the following: (1) An explanation of what the school is doing to address the problem of low achievement. (2) An explanation of what the LEA or SEA is doing to help the school address the problem of low achievement. (3) If applicable, a description of specific corrective actions or restructuring plans.	N	N

1,493	§200.39 Responsibilities resulting from identification for school improvement	Federal	Statute	(a) If an LEA identifies a school for school improvement under §200.32— (1) The LEA must— (i) Not later than the first day of the school year following identification, with the exception described in §200.32(f), provide all students enrolled in the school with the option to transfer, in accordance with §200.44, to another public school served by the LEA; and (ii) Ensure that the school receives technical assistance in accordance with §200.40; and (2) The school must develop or revise a school improvement plan in accordance with §200.41. (b) If a school fails to make AYP by the end of the first full school year after the LEA has identified it for improvement under §200.32, the LEA must— (1) Continue to provide all students enrolled in the school with the option to transfer, in accordance with §200.44, to another public school served by the LEA; (2) Continue to ensure that the school receives technical assistance in accordance with §200.40; and	N	N

1,494	§200.40 Technical assistance	Federal	Statute	(a) An LEA that identifies a school for improvement under §200.32 must ensure that the school receives technical assistance as the school develops and implements its improvement plan under §200.41 and throughout the plan's duration. (b) The LEA may arrange for the technical assistance to be provided by one or more of the following: (1) The LEA through the statewide system of school support and recognition described under section 1117 of the ESEA. (2) The SEA. (3) An institution of higher education that is in full compliance with all of the reporting provisions of Title II of the Higher Education Act of 1965. (4) A private not-for-profit organization, a private for-profit organization, an educational service agency, or another entity with experience in helping schools improve academic achievement. (c) The technical assistance must include the following: (1) Assistance in analyzing data from the State assessment system, and other examples of student work, to identify and develop solutions to problems in—	N	N

1,495	§200.41 School improvement plan	Federal	Statute	(a)(1) Not later than three months after an LEA has identified a school for improvement under §200.32, the school must develop or revise a school improvement plan for approval by the LEA. (2) The school must consult with parents, school staff, the LEA, and outside experts in developing or revising its school improvement plan. (b) The school improvement plan must cover a 2-year period. (c) The school improvement plan must— (1) Specify the responsibilities of the school, the LEA, and the SEA serving the school under the plan, including the technical assistance to be provided by the LEA under §200.40; (2)(i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in the core academic subjects at the school and address the specific academic issues that caused the LEA to identify the school for improvement; and (ii) May include a strategy for implementing a comprehensive school reform model described in section 1606 of the ESEA; (3) With regard to the school's core academic subjects, adopt policies and practices most likely to ensure that all groups of students described in	N	N

1,496	§200.41 School improvement plan	Federal	Statute	(a) Definition. “Corrective action” means action by an LEA that— (1) Substantially and directly responds to— (i) The consistent academic failure of a school that led the LEA to identify the school for corrective action; and (ii) Any underlying staffing, curriculum, or other problems in the school; (2) Is designed to increase substantially the likelihood that each group of students described in §200.13(b)(7) and enrolled in the school will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and (3) Is consistent with State law. (b) Requirements. If an LEA identifies a school for corrective action, in accordance with §200.33, the LEA must do the following: (1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with §200.44. (2) Continue to ensure that the school receives technical assistance consistent with the requirements of §200.40.	N	N

1,497	§200.42 Corrective action	Federal	Statute	(a) Definition. “Restructuring” means a major reorganization of a school's governance arrangement by an LEA that— (1) Makes fundamental reforms to improve student academic achievement in the school; (2) Has substantial promise of enabling the school to make AYP as defined under §§200.13 through 200.20; (3) Is consistent with State law; (4) Is significantly more rigorous and comprehensive than the corrective action that the LEA implemented in the school under §200.42, unless the school has begun to implement one of the options in paragraph (b)(3) of this section as a corrective action; and (5) Addresses the reasons why the school was identified for restructuring in order to enable the school to exit restructuring as soon as possible. (b) Requirements. If the LEA identifies a school for restructuring in accordance with §200.34, the LEA must do the following: (1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with §200.44.	Y	Y

1,498	§200.43 Restructuring	Federal	Statute	(a) Requirements. (1) In the case of a school identified for school improvement under §200.32, for corrective action under §200.33, or for restructuring under §200.34, the LEA must provide all students enrolled in the school with the option to transfer to another public school served by the LEA. (2) The LEA must offer this option, through the notice required in §200.37, so that students may transfer in the school year following the school year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring. (3) The schools to which students may transfer under paragraph (a)(1) of this section— (i) May not include schools that— (A) The LEA has identified for improvement under §200.32, corrective action under §200.33, or restructuring under §200.34; or (B) Are persistently dangerous as determined by the State; and (ii) May include one or more public charter schools. (4) If more than one school meets the requirements of paragraph (a)(3) of	Y	Y

1,499	§200.44 Public school choice	Federal	Statute	(a) Definition. “Supplemental educational services” means tutoring and other supplemental academic enrichment services that are— (1) In addition to instruction provided during the school day; (2) Specifically designed to— (i) Increase the academic achievement of eligible students as measured by the State's assessment system; and (ii) Enable these children to attain proficiency in meeting State academic achievement standards; and (3) Of high quality and research-based. (b) Eligibility. (1) Only students from low-income families are eligible for supplemental educational services. (2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part. (c) Requirement. (1) If an LEA identifies a school for a second year of improvement under §200.32, corrective action under §200.33, or restructuring under §200.34, the LEA must arrange, consistent with paragraph (d) of this section, for each eligible student in the school to	N	N

1,500	§200.45 Supplemental educational services	Federal	Statute	(a) If an LEA is required to make available supplemental educational services under §200.39(b)(3), §200.42(b)(3), or §200.43(b)(2), the LEA must do the following: (1) Provide the annual notice to parents described in §200.37(b)(5). (2) If requested, assist parents in choosing a provider from the list of approved providers maintained by the SEA. (3) Apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all eligible students whose parents request services consistent with §200.45. (4) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services. (5) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services. (6) Not disclose to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.	Y	N

1,501	§200.46 LEA responsibilities for supplemental educational services	Federal	Statute	(a) If one or more LEAs in a State are required to make available supplemental educational services under §200.39(b)(3), §200.42(b)(3), or §200.43(b)(2), the SEA for that State must do the following: (1)(i) In consultation with affected LEAs, parents, teachers, and other interested members of the public, promote participation by as many providers as possible. (ii) This promotion must include— (A) Annual notice to potential providers of— (1) The opportunity to provide supplemental educational services; and (2) Procedures for obtaining the SEA's approval to be a provider of those services; and (B) Posting on the SEA's Web site, for each LEA— (1) The amount equal to 20 percent of the LEA's Title I, Part A allocation available for choice-related transportation and supplemental educational services, as required in §200.48(a)(2); and (2) The per-child amount for supplemental educational services calculated under §200.48(c)(1).	Y	Y

1,502	§200.47 SEA responsibilities for supplemental educational services	Federal	Statute	(a) Amounts required. (1) To pay for choice-related transportation and supplemental educational services required under section 1116 of the ESEA, an LEA may use— (i) Funds allocated under subpart A of this part; (ii) Funds, where allowable, from other Federal education programs; and (iii) State, local, or private resources. (2) Unless a lesser amount is needed, the LEA must spend an amount equal to 20 percent of its allocation under subpart A of this part (“20 percent obligation”) to— (i) Provide, or pay for, transportation of students exercising a choice option under §200.44; (ii) Satisfy all requests for supplemental educational services under §200.45; or (iii) Pay for both paragraph (a)(2)(i) and (ii) of this section, except that— (A) The LEA must spend a minimum of an amount equal to 5 percent of its allocation under subpart A of this part on transportation under paragraph (a)(2)(i) of this section and an amount equal to 5 percent of its allocation	Y	Y

1,503	§200.48 Funding for choice-related transportation and supplemental educational services	Federal	Statute	(a) Transition requirements for public school choice and supplemental educational services. (1) Except as described in §§200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school provides public school choice in accordance with §200.44 not later than the first day of the 2002-2003 school year. (2) Except as described in §§200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school makes available supplemental educational services in accordance with §200.45 not later than the first day of the 2002-2003 school year. (b) State reservation of funds for school improvement. (1) In accordance with §200.100(a), an SEA must reserve 2 percent of the amount it receives under this part for fiscal years 2002 and 2003, and 4 percent of the amount it receives under this part for fiscal years 2004 through 2007, to— (i) Support local school improvement activities; (ii) Provide technical assistance to schools identified for improvement, corrective action, or restructuring; and (iii) Provide technical assistance to LEAs that the SEA has identified for	Y	Y

1,504	§200.49 SEA responsibilities for school improvement, corrective action, and restructuring	Federal	Statute	(a) State review. (1) An SEA must annually review the progress of each LEA in its State that receives funds under subpart A of this part to determine whether— (i) The LEA's schools served under this part are making AYP, as defined under §§200.13 through 200.20, toward meeting the State's student academic achievement standards; and (ii) The LEA is carrying out its responsibilities under this part with respect to school improvement, technical assistance, parental involvement, and professional development. (2) In reviewing the progress of an LEA, the SEA may, in the case of targeted assistance schools served by the LEA, consider the progress only of the students served or eligible for services under this subpart, provided the students selected for services in such schools are those with the greatest need for special assistance, consistent with the requirements of section 1115 of the ESEA. (b) Rewards. If an LEA has exceeded AYP as defined under §§200.13 through 200.20 for two consecutive years, the SEA may— (1) Reserve funds in accordance with §200.100(c); and (2) Make rewards of the kinds described under section 1117 of the ESEA.	Y	Y

1,505	§200.50 SEA review of LEA progress	Federal	Statute	(a) In general. (1) An SEA must— (i) Communicate with parents throughout the review of an LEA under §200.50; and (ii) Ensure that, regardless of the method or media used, it provides information to parents— (A) In an understandable and uniform format, including alternative formats upon request; and (B) To the extent practicable, in a language that parents can understand. (2) The SEA must provide information to the parents of each student enrolled in a school served by the LEA— (i) Directly, through such means as regular mail or e-mail, except that if an SEA does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and (ii) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families. (3) All communications must respect the privacy of students and their families.	Y	Y

1,506	§200.51 Notice of SEA action	Federal	Statute	(a) Improvement plan. (1) Not later than 3 months after an SEA has identified an LEA for improvement under §200.50(d), the LEA must develop or revise an LEA improvement plan. (2) The LEA must consult with parents, school staff, and others in developing or revising its improvement plan. (3) The LEA improvement plan must— (i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in core academic subjects in schools served by the LEA; (ii) Identify actions that have the greatest likelihood of improving the achievement of participating children in meeting the State's student academic achievement standards; (iii) Address the professional development needs of the instructional staff serving the LEA by committing to spend for professional development not less than 10 percent of the funds received by the LEA under subpart A of this part for each fiscal year in which the SEA identifies the LEA for improvement. These funds— (A) May include funds reserved by schools for professional development under §200.41(c)(5); but	Y	Y

1,507	§200.52 LEA improvement	Federal	Statute	(a) Definition. For the purposes of this section, the term “corrective action” means action by an SEA that— (1) Substantially and directly responds to— (i) The consistent academic failure that caused the SEA to identify an LEA for corrective action; and (ii) Any underlying staffing, curriculum, or other problems in the LEA; (2) Is designed to meet the goal that each group of students described in §200.13(b)(7) and enrolled in the LEA's schools will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and (3) Is consistent with State law. (b) Notice and hearing. Before implementing any corrective action under paragraph (c) of this section, the SEA must provide notice and a hearing to the affected LEA—if State law provides for this notice and hearing—not later than 45 days following the decision to take corrective action. (c) Requirements. If the SEA identifies an LEA for corrective action, the SEA must do the following:	Y	Y
1,508	§200.53 LEA corrective action	Federal	Statute			
1,509	§200.54 [Reserved]	Federal	Statute			

1,510	Qualifications Of Teachers And Paraprofessionals §200.55 Qualifications of teachers	Federal	Statute	A teacher described in §200.55(a) and (b)(1) is a “highly qualified teacher” if the teacher meets the requirements in paragraph (a) and paragraph (b), (c), or (d) of this section. (a) In general. (1) Except as provided in paragraph (a)(3) of this section, a teacher covered under §200.55 must— (i) Have obtained full State certification as a teacher, which may include certification obtained through alternative routes to certification; or (ii)(A) Have passed the State teacher licensing examination; and (B) Hold a license to teach in the State. (2) A teacher meets the requirement in paragraph (a)(1) of this section if the teacher— (i) Has fulfilled the State's certification and licensure requirements applicable to the years of experience the teacher possesses; or (ii) Is participating in an alternative route to certification program under which— (A) The teacher—	Y	Y

1,511	§200.56 Definition of “highly qualified teacher	Federal	Statute	(a) State plan. (1) A State that receives funds under subpart A of this part must develop, as part of its State plan under section 1111 of the ESEA, a plan to ensure that all public elementary and secondary school teachers in the State who teach core academic subjects are highly qualified not later than the end of the 2005-2006 school year. (2) The State's plan must— (i) Establish annual measurable objectives for each LEA and school that include, at a minimum, an annual increase in the percentage of— (A) Highly qualified teachers at each LEA and school; and (B) Teachers who are receiving high-quality professional development to enable them to become highly qualified and effective classroom teachers; (ii) Describe the strategies the State will use to— (A) Help LEAs and schools meet the requirements in paragraph (a)(1) of this section; and (B) Monitor the progress of LEAs and schools in meeting these requirements; and (iii) Until the SEA fully complies with paragraph (a)(1) of this section,	Y	Y

1,512	§200.57 Plans to increase teacher quality	Federal	Statute	(a) Applicability. (1) An LEA must ensure that each paraprofessional who is hired by the LEA and who works in a program supported with funds under subpart A of this part meets the requirements in paragraph (b) of this section and, except as provided in paragraph (e) of this section, the requirements in either paragraph (c) or (d) of this section. (2) For the purpose of this section, the term “paraprofessional”— (i) Means an individual who provides instructional support consistent with §200.59; and (ii) Does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties). (3) For the purpose of paragraph (a) of this section, a paraprofessional working in “a program supported with funds under subpart A of this part” is— (i) A paraprofessional in a targeted assisted school who is paid with funds under subpart A of this part; (ii) A paraprofessional in a schoolwide program school; or (iii) A paraprofessional employed by an LEA with funds under subpart A of	Y	Y

1,513	§200.58 Qualifications of paraprofessionals	Federal	Statute	(a) A paraprofessional covered under §200.58 may not be assigned a duty inconsistent with paragraph (b) of this section. (b) A paraprofessional covered under §200.58 may perform the following instructional support duties: (1) One-on-one tutoring for eligible students if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher. (2) Assisting in classroom management. (3) Assisting in computer instruction. (4) Conducting parent involvement activities. (5) Providing instructional support in a library or media center. (6) Acting as a translator. (7) Providing instructional support services. (c)(1) A paraprofessional may not provide instructional support to a student unless the paraprofessional is working under the direct supervision of a teacher who meets the requirements in §200.56.	N	N
1,514	§200.59 Duties of paraprofessionals	Federal	Statute	(a)(1) Except as provided in paragraph (a)(2) of this section, an LEA must use funds it receives under subpart A of this part as follows for professional development activities to ensure that teachers and paraprofessionals meet the requirements of §§200.56 and 200.58: (i) For each of fiscal years 2002 and 2003, the LEA must use not less than 5 percent or more than 10 percent of the funds it receives under subpart A of this part. (ii) For each fiscal year after 2003, the LEA must use not less than 5 percent of the funds it receives under subpart A of this part. (2) An LEA is not required to spend the amount required in paragraph (a)(1) of this section for a given fiscal year if a lesser amount is sufficient to ensure that the LEA's teachers and paraprofessionals meet the requirements in §§200.56 and 200.58, respectively. (b) The LEA may use additional funds under subpart A of this part to support ongoing training and professional development, as defined in section 9101(34) of the ESEA, to assist teachers and paraprofessionals in carrying out activities under subpart A of this part.	Y	Y

1,515	§200.60 Expenditures for professional development	Federal	Statute	(a) At the beginning of each school year, an LEA that receives funds under subpart A of this part must notify the parents of each student attending a Title I school that the parents may request, and the LEA will provide the parents on request, information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following: (1) Whether the teacher has met State qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction. (2) Whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived. (3) The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree. (4) Whether the child is provided services by paraprofessionals and, if so, their qualifications. (b) A school that participates under subpart A of this part must provide to each parent— (1) Information on the level of achievement of the parent's child in each of the State academic assessments required under §200.2;	Y	Y

1,516	§200.61 Parents' right to know	Federal	Statute	(a) After timely and meaningful consultation with appropriate officials of private schools, an LEA must— (1) In accordance with §§200.62 through 200.67 and section 1120 of the ESEA, provide special educational services or other benefits under subpart A of this part, on an equitable basis and in a timely manner, to eligible children who are enrolled in private elementary and secondary schools; and (2) Ensure that teachers and families of participating private school children participate on a basis equitable to the participation of teachers and families of public school children receiving these services in accordance with §200.65. (b)(1) Eligible private school children are children who— (i) Reside in participating public school attendance areas of the LEA, regardless of whether the private school they attend is located in the LEA; and (ii) Meet the criteria in section 1115(b) of the ESEA. (2) Among the eligible private school children, the LEA must select children to participate, consistent with §200.64. (c) The services and other benefits an LEA provides under this section must	Y	Y

1,517	Participation of Eligible Children in Private Schools §200.62 Responsibilities for providing services to private school children	Federal	Statute	(a) In order to have timely and meaningful consultation, an LEA must consult with appropriate officials of private schools during the design and development of the LEA's program for eligible private school children. (b) At a minimum, the LEA must consult on the following: (1) How the LEA will identify the needs of eligible private school children. (2) What services the LEA will offer to eligible private school children. (3) How and when the LEA will make decisions about the delivery of services. (4) How, where, and by whom the LEA will provide services to eligible private school children. (5) How the LEA will assess academically the services to eligible private school children in accordance with §200.10, and how the LEA will use the results of that assessment to improve Title I services. (6) The size and scope of the equitable services that the LEA will provide to eligible private school children, and, consistent with §200.64, the proportion of funds that the LEA will allocate for these services. (7) The method or sources of data that the LEA will use under §200.78 to determine the number of private school children from low-income families	Y	Y

1,518	§200.63 Consultation	Federal	Statute	(a) Equal expenditures. (1) Funds expended by an LEA under subpart A of this part for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low-income families under paragraph (a)(2) of this section. (2) An LEA must meet this requirement as follows: (i)(A) If the LEA reserves funds under §200.77 to provide instructional and related activities for public elementary or secondary school students at the district level, the LEA must also provide from those funds, as applicable, equitable services to eligible private school children. (B) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas. (ii) The LEA must reserve the funds generated by private school children under §200.78 and, in consultation with appropriate officials of the private schools, may— (A) Combine those amounts, along with funds under paragraph (a)(2)(i) of this section, if appropriate, to create a pool of funds from which the LEA provides equitable services to eligible private school children, in the aggregate, in greatest need of those services; or	Y	Y
1,519	§200.64 Factors for determining equitable participation of private school children	Federal	Statute	(a)(1) From applicable funds reserved for parent involvement and professional development under §200.77, an LEA shall ensure that teachers and families of participating private school children participate on an equitable basis in professional development and parent involvement activities, respectively. (2) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas. (b) After consultation with appropriate officials of the private schools, the LEA must conduct professional development and parent involvement activities for the teachers and families of participating private school children either— (1) In conjunction with the LEA's professional development and parent involvement activities; or (2) Independently. (c) Private school teachers are not covered by the requirements in §200.56.	Y	Y

1,520	§200.65 Determining equitable participation of teachers and families of participating private school children	Federal	Statute	(a) An LEA must use funds under subpart A of this part to provide services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children. (b)(1) The LEA must use funds under subpart A of this part to meet the special educational needs of participating private school children. (2) The LEA may not use funds under subpart A of this part for— (i) The needs of the private school; or (ii) The general needs of children in the private school.	Y	Y
1,521	§200.66 Requirements to ensure that funds do not benefit a private school	Federal	Statute	(a) The LEA must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under subpart A of this part for the benefit of eligible private school children. (b) The LEA may place equipment and supplies in a private school for the period of time needed for the program. (c) The LEA must ensure that the equipment and supplies placed in a private school— (1) Are used only for Title I purposes; and (2) Can be removed from the private school without remodeling the private school facility. (d) The LEA must remove equipment and supplies from a private school if— (1) The LEA no longer needs the equipment and supplies to provide Title I services; or (2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Title I purposes. (e) The LEA may not use funds under subpart A of this part for repairs, minor	Y	Y
1,522	§200.67 Requirements concerning property, equipment, and supplies for the benefit of private school children	Federal	Statute			

1,523	§§200.68-200.69 [Reserved]	Federal	Statute	(a) The Secretary allocates basic grants, concentration grants, targeted grants, and education finance incentive grants, through SEAs, to each eligible LEA for which the Bureau of the Census has provided data on the number of children from low-income families residing in the school attendance areas of the LEA (hereinafter referred to as the “Census list”). (b) In establishing eligibility and allocating funds under paragraph (a) of this section, the Secretary counts children ages 5 to 17, inclusive (hereinafter referred to as “formula children”)— (1) From families below the poverty level based on the most recent satisfactory data available from the Bureau of the Census; (2) From families above the poverty level receiving assistance under the Temporary Assistance for Needy Families program under Title IV of the Social Security Act; (3) Being supported in foster homes with public funds; and (4) Residing in local institutions for neglected children. (c) Except as provided in §§200.72, 200.75, and 200.100, an SEA may not change the Secretary's allocation to any LEA that serves an area with a total census population of at least 20,000 persons.		

1,524	Allocations to LEAS §200.70 Allocation of funds to LEAs in general	Federal	Statute	(a) Basic grants. An LEA is eligible for a basic grant if the number of formula children is— (1) At least 10; and (2) Greater than two percent of the LEA's total population ages 5 to 17 years, inclusive. (b) Concentration grants. An LEA is eligible for a concentration grant if— (1) The LEA is eligible for a basic grant under paragraph (a) of this section; and (2) The number of formula children exceeds— (i) 6,500; or (ii) 15 percent of the LEA's total population ages 5 to 17 years, inclusive. (c) Targeted grants. An LEA is eligible for a targeted grant if the number of formula children is— (1) At least 10; and (2) At least five percent of the LEA's total population ages 5 to 17 years,	Y	Y
1,525	§200.71 LEA eligibility	Federal	Statute	(a) General. For each LEA not on the Census list (hereinafter referred to as a "new" LEA), an SEA must determine the number of formula children and the number of children ages 5 to 17, inclusive, in that LEA. (b) Determining LEA eligibility. An SEA must determine basic grant, concentration grant, targeted grant, and education finance incentive grant eligibility for each new LEA and re-determine eligibility for the LEAs on the Census list, as appropriate, based on the number of formula children and children ages 5 to 17, inclusive, determined in paragraph (a) of this section. (c) Adjusting LEA allocations. An SEA must adjust the LEA allocations calculated by the Secretary to determine allocations for eligible new LEAs based on the number of formula children determined in paragraph (a) of this section.	Y	N

1,526	§200.72 Procedures for adjusting allocations determined by the Secretary to account for eligible LEAs not on the Census list	Federal	Statute	(a) General. (1) Except as authorized under paragraph (c) of this section and §200.100(d)(2), an SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts established under paragraph (a)(4) of this section. (2) The hold-harmless protection limits the maximum reduction of an LEA's allocation compared to the LEA's allocation for the preceding year. (3) Except as provided in §200.100(d), an SEA must apply the hold-harmless requirement separately for basic grants, concentration grants, targeted grants, and education finance incentive grants as described in paragraph (a)(4) of this section. (4) Under section 1122(c) of the ESEA, the hold-harmless percentage varies based on the LEA's proportion of formula children, as shown in the following table: LEA's number of formula children ages 5 to 17, inclusive, as a percentage of its total population of children ages 5 to 17, inclusive Hold-harmless percentage Applicable grant formulas (i) 30% or more (ii) 15% or more but less than 30% (iii) Less than 15% 95 90 85 Basic Grants, Concentration Grants, Targeted Grants, and Education	N	N

1,527	§200.73 Applicable hold-harmless provisions	Federal	Statute	(a) For eligible LEAs serving an area with a total census population of less than 20,000 persons (hereinafter referred to as “small LEAs”), an SEA may apply to the Secretary to use an alternative method to distribute basic grant, concentration grant, targeted grant, and education finance incentive grant funds. (b) In its application, the SEA must— (1) Identify the alternative data it proposes to use; and (2) Assure that it has established a procedure through which a small LEA that is dissatisfied with the determination of its grant may appeal directly to the Secretary. (c) The SEA must base its alternative method on population data that best reflect the current distribution of children from low-income families among the State's small LEAs and use the same poverty measure consistently for small LEAs across the State for all Title I, part A programs. (d) Based on the alternative poverty data selected, the SEA must— (1) Re-determine eligibility of its small LEAs for basic grants, concentration grants, targeted grants, and education finance incentive grants in accordance with §200.71;	Y	Y
1,528	§200.74 Use of an alternative method to distribute grants to LEAs with fewer than 20,000 total residents	Federal	Statute	(a) In a State in which the number of formula children is less than 0.25 percent of the national total on January 8, 2002 (hereinafter referred to as a “small State”), an SEA may either— (1) Allocate concentration grants among eligible LEAs in the State in accordance with §§200.72 through 200.74, as applicable; or (2) Without regard to the allocations determined by the Secretary— (i) Identify those LEAs in which the number or percentage of formula children exceeds the statewide average number or percentage of those children; and (ii) Allocate concentration grant funds, consistent with §200.73, among the LEAs identified in paragraph (a)(2)(i) of this section based on the number of formula children in each of those LEAs. (b) If the SEA in a small State uses an alternative method under §200.74, the SEA must use the poverty data approved under the alternative method to identify those LEAs with numbers or percentages of formula children that exceed the statewide average number or percentage of those children for the State as a whole.	Y	Y

1,529	§200.75 Special procedures for allocating concentration grant funds in small States	Federal	Statute			
1,530	§200.76 [Reserved]	Federal	Statute	Before allocating funds in accordance with §200.78, an LEA must reserve funds as are reasonable and necessary to— (a) Provide services comparable to those provided to children in participating school attendance areas and schools to serve— (1) Homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where homeless children may live; (2) Children in local institutions for neglected children; and (3) If appropriate— (i) Children in local institutions for delinquent children; and (ii) Neglected and delinquent children in community-day school programs; (b) Provide, where appropriate under section 1113(c)(4) of the ESEA, financial incentives and rewards to teachers who serve students in Title I schools identified for school improvement, corrective action, and restructuring for the purpose of attracting and retaining qualified and effective teachers; (c) Meet the requirements for choice-related transportation and		

1,531	Procedures for the Within-District Allocation of LEA Program Funds §200.77 Reservation of funds by an LEA	Federal	Statute	(a)(1) An LEA must allocate funds under subpart A of this part to school attendance areas and schools, identified as eligible and selected to participate under section 1113(a) or (b) of the ESEA, in rank order on the basis of the total number of children from low-income families in each area or school. (2)(i) In calculating the total number of children from low-income families, the LEA must include children from low-income families who attend private schools. (ii) To obtain a count of private school children, the LEA may— (A) Use the same poverty data the LEA uses to count public school children; (B)(1) Use comparable poverty data from a survey of families of private school students that, to the extent possible, protects the families' identity; and (2) Extrapolate data from the survey based on a representative sample if complete actual data are unavailable; (C) Use comparable poverty data from a different source, such as scholarship applications; (D) Apply the low-income percentage of each participating public school	N	N

1,532	§200.78 Allocation of funds to school attendance areas and schools	Federal	Statute	(a) For the purpose of determining compliance with the supplement not supplant requirement in section 1120A(b) and the comparability requirement in section 1120A(c) of the ESEA, a grantee or subgrantee under subpart A of this part may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I. (b) A program meets the intent and purposes of Title I if the program either— (1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 40 percent; (ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging academic achievement standards that all students are expected to meet; (iii) Is designed to meet the educational needs of all students in the school, particularly the needs of students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards; and (iv) Uses the State's assessment system under §200.2 to review the effectiveness of the program; or	Y	N
1,533	Fiscal Requirements §200.79 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations	Federal	Statute	Eligible participants under the Migrant Education Even Start Program (MEES) must meet the definitions of a migratory child, a migratory agricultural worker, or a migratory fisher in §200.81.	N	N

1,534	Subpart B—Even Start Family Literacy Program §200.80 Migrant Education Even Start Program definition	Federal	Statute	The following definitions apply to programs and projects operated under subpart C of this part: (a) Agricultural work means the production or initial processing of crops, dairy products, poultry, or livestock, as well as the cultivation or harvesting of trees. It consists of work performed for wages or personal subsistence. (b) Fishing work means the catching or initial processing of fish or shellfish or the raising or harvesting of fish or shellfish at fish farms. It consists of work performed for wages or personal subsistence. (c) In order to obtain, when used to describe why a worker moved, means that one of the purposes of the move is to seek or obtain qualifying work. (1) If a worker states that a purpose of the move was to seek any type of employment, i.e., the worker moved with no specific intent to find work in a particular job, the worker is deemed to have moved with a purpose of obtaining qualifying work if the worker obtains qualifying work soon after the move. (2) Notwithstanding the introductory text of this paragraph (c), a worker who did not obtain qualifying work soon after a move may be considered to have moved in order to obtain qualifying work only if the worker states that at least one purpose of the move was specifically to seek the qualifying work, and—	N	N

1,535	Subpart C—Migrant Education Program §200.81 Program definitions	Federal	Statute	An SEA may use the funds available from its State Migrant Education Program (MEP) to carry out other administrative activities, beyond those allowable under §200.100(b)(4), that are unique to the MEP, including those that are the same or similar to administrative activities performed by LEAs in the State under subpart A of this part. These activities include but are not limited to— (a) Statewide identification and recruitment of eligible migratory children; (b) Interstate and intrastate coordination of the State MEP and its local projects with other relevant programs and local projects in the State and in other States; (c) Procedures for providing for educational continuity for migratory children through the timely transfer of educational and health records, beyond that required generally by State and local agencies; (d) Collecting and using information for accurate distribution of subgrant funds; (e) Development of a statewide needs assessment and a comprehensive State plan for MEP service delivery; (f) Supervision of instructional and support staff;	Y	Y

1,536	§200.82 Use of program funds for unique program function costs	Federal	Statute	(a) An SEA that receives a grant of MEP funds must develop and update a written comprehensive State plan (based on a current statewide needs assessment that, at a minimum, has the following components: (1) Performance targets. The plan must specify— (i) Performance targets that the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as the State's performance targets, if any, for school readiness; and (ii) Any other performance targets that the State has identified for migratory children. (2) Needs assessment. The plan must include an identification and assessment of— (i) The unique educational needs of migratory children that result from the children's migratory lifestyle; and (ii) Other needs of migratory students that must be met in order for migratory children to participate effectively in school. (3) Measurable program outcomes. The plan must include the measurable program outcomes (i.e., objectives) that a State's migrant education	Y	Y
1,537	§200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery	Federal	Statute	Each SEA must determine the effectiveness of its program through a written evaluation that measures the implementation and results achieved by the program against the State's performance targets in §200.83(a)(1), particularly for those students who have priority for service as defined in section 1304(d) of the ESEA.	Y	Y
1,538	§200.84 Responsibilities of SEAs for evaluating the effectiveness of the MEP	Federal	Statute	While the specific school improvement requirements of section 1116 of the ESEA do not apply to the MEP, SEAs and local operating agencies receiving MEP funds must use the results of the evaluation carried out under §200.84 to improve the services provided to migratory children.	N	N
1,539	§200.85 Responsibilities of SEAs and operating agencies for improving services to migratory children	Federal	Statute	Funds available under part C of Title I of the ESEA may be used in a schoolwide program subject to the requirements of §200.29(c)(1).	N	N
1,540	§200.86 Use of MEP funds in schoolwide projects	Federal	Statute	An SEA and its operating agencies must conduct programs and projects under subpart C of this part in a manner consistent with the basic requirements of section 9501 of the ESEA.	N	N

1,541	§200.87 Responsibilities for participation of children in private schools	Federal	Statute	(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the ESEA, a grantee or subgrantee under part C of Title I may exclude supplemental State and local funds expended in any school attendance area or school for carrying out special programs that meet the intent and purposes of part C of Title I. (b) Before funds for a State and local program may be excluded for purposes of these requirements, the SEA must make an advance written determination that the program meets the intent and purposes of part C of Title I. (c) A program meets the intent and purposes of part C of Title I if it meets the following requirements: (1) The program is specifically designed to meet the unique educational needs of migratory children, as defined in section 1309 of the ESEA. (2) The program is based on performance targets related to educational achievement that are similar to those used in programs funded under part C of Title I of the ESEA, and is evaluated in a manner consistent with those program targets. (3) The grantee or subgrantee keeps, and provides access to, records that ensure the correctness and verification of these requirements.	N	N

1,542	§200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations	Federal	Statute	(a) Allocation of funds under the MEP for fiscal year (FY) 2006 and subsequent years. (1) For purposes of calculating the size of MEP allocations for each SEA for FY 2006 and subsequent years (as well as for supplemental MEP allocations for FY 2005), the Secretary determines each SEA's FY 2002 base allocation amount under section 1303(a)(2) and (b) of the Act by applying, to the counts of eligible migratory children that the SEA submitted for 2000-2001, the defect rate that the SEA reports to the Secretary and that the Secretary accepts based on a statewide retrospective re-interviewing process that the SEA has conducted. (2)(i) The Secretary conditions an SEA's receipt of final FY 2007 and subsequent-year MEP awards on the SEA's completion of a thorough re-documentation of the eligibility of all children (and the removal of all ineligible children) included in the State's 2007-2008 MEP child counts. (ii) To carry out this re-documentation, an SEA must examine its rolls of all currently identified migratory children and remove from the rolls all children it judges to be ineligible based on the types of problems identified in its statewide retrospective re-interviewing as causing defective eligibility determinations. (b) Responsibilities of SEAs for re-interviewing to ensure the eligibility of children under the MEP—(1) Retrospective re-interviewing. (i) As a condition for the continued receipt of MEP funds in FY 2006 and subsequent years, an SEA that received such funds in FY 2005 but did not implement a statewide	N	N

1,543	§200.89 MEP allocations; Re-interviewing; Eligibility documentation; and Quality control	Federal	Statute	(a) The following definitions apply to the programs authorized in part D, subparts 1 and 2 of Title I of the ESEA: Children and youth means the same as “children” as that term is defined in §200.103(a). (b) The following definitions apply to the programs authorized in part D, subpart 1 of Title I of the ESEA: Institution for delinquent children and youth means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who— (1) Have been adjudicated to be delinquent or in need of supervision; and (2) Have had an average length of stay in the institution of at least 30 days. Institution for neglected children and youth means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who— (1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and	N	N

1,544	Subpart D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk of Dropping Out §200.90 Program definitions	Federal	Statute	To receive an allocation under part D, subpart 1 of Title I of the ESEA, an SEA must provide the Secretary with a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in paragraphs (a) and (b) of this section. (a) Enrollment. (1) To be counted, a child or youth must be enrolled in a regular program of instruction for at least— (i) 20 hours per week if in an institution or community day program for neglected or delinquent children; or (ii) 15 hours per week if in an adult correctional institution. (2) The State agency must specify the date on which the enrollment of neglected or delinquent children is determined under paragraph (a)(1) of this section, except that the date specified must be— (i) Consistent for all institutions or community day programs operated by the State agency; and (ii) Represent a school day in the calendar year preceding the year in which funds become available.	Y	Y
1,545	§200.91 SEA counts of eligible children	Federal	Statute			

1,546	§§200.92-200.99 [Reserved]	Federal	Statute	A State must reserve funds for school improvement, State administration, and State academic achievement awards as follows: (a) School improvement. (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the ESEA, an SEA must first reserve— (i) Two percent from the sum of the amounts allocated to the State under section 1002(a) of the ESEA for fiscal years 2002 and 2003; and (ii) Four percent from the sum of the amounts allocated to the State under section 1002(a) of the ESEA for fiscal year 2004 and succeeding years. (2) In reserving funds under paragraph (a)(1) of this section, a State may not reduce the sum of the allocations an LEA receives under section 1002(a) of the ESEA below the sum of the allocations the LEA received under section 1002(a) for the preceding fiscal year. (3) If funds under section 1002(a) are insufficient in a given fiscal year to implement both paragraphs (a)(1) and (2) of this section, a State is not required to reserve the full amount required under paragraph (a)(1) of this section. (b) State administration. (1) An SEA may reserve for State administrative activities authorized in sections 1004 and 1903 of the ESEA no more than the	IV.B. Education Accountability Act IX.A. Finance and Operations	
1,547	Subpart E—General Provisions §200.100 Reservation of funds for school improvement, State administration, and the State academic achievement awards program.	Federal	Statute		Y	N

1,548	§§200.101-200.102 [Reserved]	Federal	Statute	The following definitions apply to programs operated under this part: (a) Children means— (1) Persons up through age 21 who are entitled to a free public education through grade 12; and (2) Preschool children below the age and grade level at which the agency provides free public education. (b) Fiscal year means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for record-keeping. (c) Student with a disability means child with a disability, as defined in section 602(3) of the IDEA.		
1,549	§200.103 Definitions	Federal	Statute			
1,550	§§200.104-200.109 [Reserved]	Federal	Statute			

Title 34: Education PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Item	Law Number	Jurisdiction	Type of Law	Statuary Requirement and/or Authority Granted	Does this law specify who (customer) the agency must or may serve? (Y/N)	Does the law specify a deliverable (product or service) the agency must or may provide? (Y/N)
1,551	Title 34: Education PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES	Federal	Statute	The purposes of this part are— (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for fu	Y	Y
1,552	Subpart A—General Purposes and Applicability §300.1 Purposes	Federal	Statute	(a) States. This part applies to each State that receives payments under Part B of the Act, as defined in §300.4. (b) Public agencies within the State. The provisions of this part— (1) Apply to all political subdivisions of the State that are involved i	Y	Y
1,553	§300.2 Applicability of this part to State and local agencies	Federal	Statute	Act means the Individuals with Disabilities Education Act, as amended.	N	N
1,554	Definitions Used in This Part §300.4 Act	Federal	Statute	Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disabilit	N	N
1,555	§300.5 Assistive technology device	Federal	Statute	Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes— (a) The evaluation of the needs of a child with a disability, inclu	N	N
1,556	§300.6 Assistive technology service	Federal	Statute	Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).	N	N
1,557	§300.7 Charter school	Federal	Statute	(a) General. (1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindnes	N	N
1,558	§300.8 Child with a disability	Federal	Statute	Consent means that— (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication; (b) The parent understands and agrees in writing	N	N

1,559	§300.9 Consent	Federal	Statute	Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.	N	N
1,560	§300.10 Core academic subjects	Federal	Statute	(a) Day means calendar day unless otherwise indicated as business day or school day. (b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in	N	N
1,561	§300.11 Day; business day; school day	Federal	Statute	Educational service agency means— (a) A regional public multiservice agency— (1) Authorized by State law to develop, manage, and provide services or programs to LEAs; (2) Recognized as an administrative agency for purposes of the provision of special e	N	N
1,562	§300.12 Educational service agency	Federal	Statute	Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.	N	N
1,563	§300.13 Elementary school	Federal	Statute	Equipment means— (a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and (b) All other items necessary for the functioning of a particular facility as a facility f	N	N
1,564	§300.14 Equipment	Federal	Statute	Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.	N	N
1,565	§300.15 Evaluation	Federal	Statute	Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducti	N	N
1,566	§300.16 Excess costs	Federal	Statute	Free appropriate public education or FAPE means special education and related services that— (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of	N	N

1,567	§300.17 Free appropriate public education	Federal	Statute	(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9	N	N
1,568	§300.18 Highly qualified special education teachers	Federal	Statute	Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.	N	N
1,569	§300.19 Homeless children	Federal	Statute	Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.	N	N
1,570	§300.20 Include	Federal	Statute	(a) Indian means an individual who is a member of an Indian tribe. (b) Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in	N	N
1,571	§300.21 Indian and Indian tribe	Federal	Statute	Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324.	N	N
1,572	§300.22 Individualized education program	Federal	Statute	Individualized education program team or IEP Team means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.	N	N
1,573	§300.23 Individualized education program team	Federal	Statute	Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act.	N	N
1,574	§300.24 Individualized family service plan	Federal	Statute	Infant or toddler with a disability— (a) Means an individual under three years of age who needs early intervention services because the individual— (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedure	N	N
1,575	§300.25 Infant or toddler with a disability	Federal	Statute	Institution of higher education— (a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and (b) Also includes any community college receiving funds from the Secretary of the Inter	N	N
1,576	§300.26 Institution of higher education	Federal	Statute	Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.	N	N

1,577	§300.27 Limited English proficient	Federal	Statute	(a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secon	N	N
1,578	§300.28 Local educational agency	Federal	Statute	(a) Native language, when used with respect to an individual who is limited English proficient, means the following: (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, ex	N	N
1,579	§300.29 Native language	Federal	Statute	(a) Parent means— (1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) A guardian generally aut	N	N
1,580	§300.30 Parent	Federal	Statute	Parent training and information center means a center assisted under sections 671 or 672 of the Act. (Authority: 20 U.S.C. 1401(25)) return arrow Back to Top §300.32 Personally identifiable. Personally identifiable means information that contains—	N	N
1,581	§300.31 Parent training and information center	Federal	Statute	Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing educat	N	N
1,582	§300.33 Public agency	Federal	Statute	(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiolog	N	N
1,583	§300.34 Related services	Federal	Statute	Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.	N	N
1,584	§300.35 Scientifically based research	Federal	Statute	Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.	N	N
1,585	§300.36 Secondary school	Federal	Statute	Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the l	N	N
1,586	§300.37 Services plan	Federal	Statute	Secretary means the Secretary of Education.	N	N

1,587	§300.38 Secretary	Federal	Statute	(a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including— (i) Instruction conducted in the classroom, in the home, in hospitals and institutions,	N	N
1,588	§300.39 Special education	Federal	Statute	State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.	N	N
1,589	§300.40 State	Federal	Statute	State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agen	N	N
1,590	§300.41 State educational agency	Federal	Statute	Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated	N	N
1,591	§300.42 Supplementary aids and services	Federal	Statute	(a) Transition services means a coordinated set of activities for a child with a disability that— (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability	N	N
1,592	§300.43 Transition services	Federal	Statute	Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.	N	N
1,593	§300.44 Universal design	Federal	Statute	(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is— (1) A foster child; (2) A ward of the State; or (3) In the custody of a public child welfare agency. (b	N	N
1,594	§300.45 Ward of the State	Federal	Statute	A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§300.	N	N
1,595	Subpart B—State Eligibility General §300.100 Eligibility for assistance	Federal	Statute	(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300	Y	Y

1,596	FAPE Requirements §300.101 Free appropriate public education (FAPE).	Federal	Statute	(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following: (1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be incon	Y	Y
1,597	§300.102 Limitation—exception to FAPE for certain ages	Federal	Statute	(a) Each State may use whatever State, local, Federal, and private sources of support that are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a St	Y	Y
1,598	Other FAPE Requirements §300.103 FAPE—methods and payments	Federal	Statute	If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child	N	N
1,599	§300.104 Residential placement	Federal	Statute	(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the chi	N	N
1,600	§300.105 Assistive technology	Federal	Statute	(a) General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section. (2) Extended school year services must be provided only if a child's IEP Team	N	N
1,601	§300.106 Extended school year services	Federal	Statute	The State must ensure the following: (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and	Y	Y
1,602	§300.107 Nonacademic services	Federal	Statute	The State must ensure that public agencies in the State comply with the following: (a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency	Y	Y
1,603	§300.108 Physical education	Federal	Statute	The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that	Y	Y
1,604	§300.109 Full educational opportunity goal (FEOG).	Federal	Statute	The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including a	Y	Y
1,605	§300.110 Program options	Federal	Statute	(a) General. (1) The State must have in effect policies and procedures to ensure that— (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with d	Y	Y

1,606	§300.111 Child find	Federal	Statute	The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)	Y	Y
1,607	§300.112 Individualized education programs (IEP).	Federal	Statute	(a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (b) External components of surgically implanted medical devices. (1) Subject to paragrap	Y	Y
1,608	§300.113 Routine checking of hearing aids and external components of surgically implanted medical devices	Federal	Statute	(a) General. (1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and	Y	Y
1,609	Least Restrictive Environment (LRE) §300.114 LRE requirements	Federal	Statute	(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. (b) The continuum required in paragraph (a) of this section must— (1)	Y	Y
1,610	§300.115 Continuum of alternative placements	Federal	Statute	In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— (a) The placement decision— (1) Is made by a group of persons, including the parents, and other pe	N	N
1,611	§300.116 Placements	Federal	Statute	In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disabilit	Y	Y
1,612	§300.117 Nonacademic settings	Federal	Statute	Except as provided in §300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that §300.114 is effectively implemented, including, if necessary, making arrangements with public and pri	N	N
1,613	§300.118 Children in public or private institutions	Federal	Statute	Each SEA must carry out activities to ensure that teachers and administrators in all public agencies— (a) Are fully informed about their responsibilities for implementing §300.114; and (b) Are provided with technical assistance and training necessary to	Y	Y

1,614	§300.119 Technical assistance and training activities	Federal	Statute	(a) The SEA must carry out activities to ensure that §300.114 is implemented by each public agency. (b) If there is evidence that a public agency makes placements that are inconsistent with §300.114, the SEA must— (1) Review the public agency's justific	Y	Y
1,615	§300.120 Monitoring activities	Federal	Statute	(a) General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§300.500 through 300.536. (b) Procedural safeguards identified. Children with disabilities and their parents must b	Y	Y
1,616	Additional Eligibility Requirements §300.121 Procedural safeguards	Federal	Statute	Children with disabilities must be evaluated in accordance with §§300.300 through 300.311 of subpart D of this part.	N	N
1,617	§300.122 Evaluation	Federal	Statute	The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained und	Y	Y
1,618	§300.123 Confidentiality of personally identifiable information	Federal	Statute	The State must have in effect policies and procedures to ensure that— (a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience	Y	Y
1,619	§300.124 Transition of children from the Part C program to preschool programs	Federal	Statute			
1,620	§§300.125-300.128 [Reserved]	Federal	Statute	The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148.	Y	Y
1,621	Children in Private Schools §300.129 State responsibility regarding children in private schools	Federal	Statute	Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §	N	N
1,622	Children With Disabilities Enrolled by Their Parents in Private Schools §300.130 Definition of parentally-placed private school children with disabilities	Federal	Statute	(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accor	N	N

1,623	§300.131 Child find for parentally-placed private school children with disabilities	Federal	Statute	(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA,	N	N
1,624	§300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement	Federal	Statute	(a) Formula. To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities: (1) For children aged 3	N	N
1,625	§300.133 Expenditures	Federal	Statute	To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and developm	N	N
1,626	§300.134 Consultation	Federal	Statute	(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools. (b) If the representatives do not provide the affirmation within	N	N
1,627	§300.135 Written affirmation	Federal	Statute	(a) General. A private school official has the right to submit a complaint to the SEA that the LEA— (1) Did not engage in consultation that was meaningful and timely; or (2) Did not give due consideration to the views of the private school official. (b	Y	Y
1,628	§300.136 Compliance	Federal	Statute	(a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enr	N	N
1,629	§300.137 Equitable services determined	Federal	Statute	(a) General. (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and	N	N
1,630	§300.138 Equitable services provided	Federal	Statute	(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law. (b) Transportation—(1) General.	Y	Y
1,631	§300.139 Location of services and transportation	Federal	Statute	(a) Due process not applicable, except for child find. (1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300	Y	Y

1,632	§300.140 Due process complaints and State complaints	Federal	Statute	(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. (b) The LEA must use funds provided under Part B of the Act to meet the	N	N
1,633	§300.141 Requirement that funds not benefit a private school	Federal	Statute	(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities— (1) To the extent necessary to provide services under §§300.130 through 30	Y	Y
1,634	§300.142 Use of personnel	Federal	Statute	An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—' (a) The classes are at the same site; and (b) The classes include childre	N	N
1,635	§300.143 Separate classes prohibited	Federal	Statute	(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses a	Y	Y
1,636	§300.144 Property, equipment, and supplies	Federal	Statute	Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.	Y	Y
1,637	Children With Disabilities in Private Schools Placed or Referred by Public Agencies §300.145 Applicability of §§300.146 through 300.147	Federal	Statute	Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency— (a) Is provided special education and related services— (1) In conformance with an IEP that meets the requirements of §§	Y	Y
1,638	§300.146 Responsibility of SEA	Federal	Statute	In implementing §300.146, the SEA must— (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; (b) Disseminate copies of applicable standards to each private school and facility to which a public ag	Y	Y
1,639	§300.147 Implementation by SEA	Federal	Statute	(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents	N	N

1,640	Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue §300.148 Placement of children by parents when FAPE is at issue	Federal	Statute	(a) The SEA is responsible for ensuring— (1) That the requirements of this part are carried out; and (2) That each educational program for children with disabilities administered within the State, including each program administered by any other State o	Y	Y
1,641	SEA Responsibility for General Supervision and Implementation of Procedural Safeguards §300.149 SEA responsibility for general supervision	Federal	Statute	The SEA (and any agency assigned responsibility pursuant to §300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities se	Y	Y
1,642	§300.150 SEA implementation of procedural safeguards	Federal	Statute	(a) General. Each SEA must adopt written procedures for— (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by— (i) Providing for the filing of a complain	Y	Y
1,643	State Complaint Procedures §300.151 Adoption of State complaint procedures	Federal	Statute	(a) General. Each SEA must adopt written procedures for— (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by— (i) Providing for the filing of a complain	Y	Y
1,644	§300.152 Minimum State complaint procedures	Federal	Statute	(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to— (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is	Y	Y
1,645	§300.153 Filing a complaint	Federal	Statute	(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152. (b) The complaint must include— (1) A statement that a public agency has violated a requirement of Part B of the Act or of	N	N
1,646	Methods of Ensuring Services §300.154 Methods of ensuring services	Federal	Statute	(a) Establishing responsibility for services. The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agen	Y	Y

1,647	Additional Eligibility Requirements §300.155 Hearings relating to LEA eligibility	Federal	Statute	The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).	Y	Y
1,648	§300.156 Personnel qualifications	Federal	Statute	(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and	Y	Y
1,649	§300.157 Performance goals and indicators	Federal	Statute	The State must— (a) Have in effect established goals for the performance of children with disabilities in the State that— (1) Promote the purposes of this part, as stated in §300.1; (2) Are the same as the State's objectives for progress by children in	Y	Y
1,650	§§300.158-300.159 [Reserved]	Federal	Statute			
1,651	§300.160 Participation in assessments	Federal	Statute	(a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations a	Y	Y
1,652	§300.161 [Reserved]	Federal	Statute			
1,653	§300.162 Supplementation of State, local, and other Federal funds	Federal	Statute	(a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part. (b) Prohibition against commingling. (1) Funds paid to a State under this part must not be commingled with State funds. (2) The	Y	Y
1,654	§300.163 Maintenance of State financial support	Federal	Statute	(a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of	Y	Y
1,655	§300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds	Federal	Statute	(a) Except as provided under §§300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LE	Y	Y
1,656	§300.165 Public participation	Federal	Statute	(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the hearings, and an opp	Y	Y

1,657	§300.166 Rule of construction	Federal	Statute	In complying with §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.	Y	Y
1,658	State Advisory Panel §300.167 State advisory panel	Federal	Statute	The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.	Y	Y
1,659	§300.168 Membership	Federal	Statute	(a) General. The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved in, or concern	N	N
1,660	§300.169 Duties	Federal	Statute	The advisory panel must— (a) Advise the SEA of unmet needs within the State in the education of children with disabilities; (b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities; (c	Y	Y
1,661	Other Provisions Required for State Eligibility §300.170 Suspension and expulsion rates	Federal	Statute	(a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities— (1) Among LEAs in the S	Y	Y
1,662	§300.171 Annual description of use of Part B funds	Federal	Statute	(a) In order to receive a grant in any fiscal year a State must annually describe— (1) How amounts retained for State administration and State-level activities under §300.704 will be used to meet the requirements of this part; and (2) How those amounts	Y	Y
1,663	§300.172 Access to instructional materials	Federal	Statute	(a) General. The State must— (1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabiliti	Y	Y
1,664	§300.173 Overidentification and disproportionality	Federal	Statute	The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of child	Y	Y

1,665	§300.174 Prohibition on mandatory medication	Federal	Statute	(a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as	Y	Y
1,666	§300.175 SEA as provider of FAPE or direct services	Federal	Statute	If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency— (a) Must comply with any additional requirements of §§300.201 and 300.202 and §§300.206 through 300.226 as if the agency were an LEA; and	Y	Y
1,667	§300.176 Exception for prior State plans	Federal	Statute	(a) General. If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of §300.100, including any policies and procedures filed under Part B of the Act as in effect be	Y	Y
1,668	§300.177 States' sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities	Federal	Statute	(a) States' sovereign immunity. (1) A State that accepts funds under this part waives its immunity under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of this part. (2) In a suit against a State fo	Y	Y
1,669	Department Procedures §300.178 Determination by the Secretary that a State is eligible to receive a grant	Federal	Statute	If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.	N	N
1,670	§300.179 Notice and hearing before determining that a State is not eligible to receive a grant	Federal	Statute	(a) General. (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until providing the State— (i) With reasonable notice; and (ii) With an opportunity for a hearing. (2) In impleme	N	N
1,671	§300.180 Hearing official or panel	Federal	Statute	(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing. (b) If more than one individual	Y	Y
1,672	§300.181 Hearing procedures	Federal	Statute	(a) As used in §§300.179 through 300.184 the term party or parties means the following: (1) An SEA that requests a hearing regarding the proposed disapproval of the State's eligibility under this part. (2) The Department official who administers the pro	N	N

1,673	§300.182 Initial decision; final decision	Federal	Statute	(a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under §300.179 including any amendments to or further clarifications of the issues, under §300.	N	N
1,674	§300.183 Filing requirements	Federal	Statute	(a) Any written submission by a party under §§300.179 through 300.184 must be filed by hand delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages. (b) The filing	N	N
1,675	§300.184 Judicial review	Federal	Statute	If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under section 612 of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for	N	N
1,676	§300.185 [Reserved]	Federal	Statute			
1,677	§300.186 Assistance under other Federal programs	Federal	Statute	Part B of the Act may not be construed to permit a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of FAPE for children with disabilities in t	N	N
1,678	By-pass for Children in Private Schools §300.190 By-pass—general	Federal	Statute	(a) If, on December 2, 1983, the date of enactment of the Education of the Handicapped Act Amendments of 1983, an SEA was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in privat	N	N
1,679	§300.191 Provisions for services under a by-pass	Federal	Statute	(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State, and as appropriate, LEA or other public agency officials to consider matters such as— (1) Any	Y	Y
1,680	§300.192 Notice of intent to implement a by-pass	Federal	Statute	(a) Before taking any final action to implement a by-pass, the Secretary provides the SEA and, as appropriate, LEA or other public agency with written notice. (b) In the written notice, the Secretary— (1) States the reasons for the proposed by-pass in s	N	N
1,681	§300.193 Request to show cause	Federal	Statute	An SEA, LEA or other public agency in receipt of a notice under §300.192 that seeks an opportunity to show cause why a by-pass should not be implemented must submit a written request for a show cause hearing to the Secretary, within the specified time per	Y	Y
1,682	§300.194 Show cause hearing	Federal	Statute	(a) If a show cause hearing is requested, the Secretary— (1) Notifies the SEA and affected LEA or other public agency, and other appropriate public and private school officials of the time and place for the hearing; (2) Designates a person to conduct th	Y	Y

1,683	§300.195 Decision	Federal	Statute	(a) The designee who conducts the show cause hearing— (1) Within 120 days after the record of a show cause hearing is closed, issues a written decision that includes a statement of findings; and (2) Submits a copy of the decision to the Secretary and se	Y	N
1,684	§300.196 Filing requirements	Federal	Statute	(a) Any written submission under §300.194 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages. (b) The filing date under paragraph (a) of	N	N
1,685	§300.197 Judicial review	Federal	Statute	If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial revie	Y	Y
1,686	§300.198 Continuation of a by-pass	Federal	Statute	The Secretary continues a by-pass until the Secretary determines that the SEA, LEA or other public agency will meet the requirements for providing services to private school children.	N	N
1,687	State Administration §300.199 State administration	Federal	Statute	(a) Rulemaking. Each State that receives funds under Part B of the Act must— (1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part; (2) Identify in writing to LEAs located in the State and	Y	Y
1,688	Subpart C—Local Educational Agency Eligibility §300.200 Condition of assistance	Federal	Statute	An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§300.201 through 300.213.	N	N
1,689	§300.201 Consistency with State policies	Federal	Statute	The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§300.101 through 300.163, a	N	N
1,690	§300.202 Use of amounts	Federal	Statute	(a) General. Amounts provided to the LEA under Part B of the Act— (1) Must be expended in accordance with the applicable provisions of this part; (2) Must be used only to pay the excess costs of providing special education and related services to childr	N	N
1,691	§300.203 Maintenance of effort	Federal	Statute	(a) General. Except as provided in §§300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the leve	N	N

1,692	§300.204 Exception to maintenance of effort	Federal	Statute	Notwithstanding the restriction in §300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following: (	N	N
1,693	§300.205 Adjustment to local fiscal efforts in certain fiscal years	Federal	Statute	(a) Amounts in excess. Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under §300.705 exceeds the amount th	N	N
1,694	§300.206 Schoolwide programs under title I of the ESEA	Federal	Statute	(a) General. Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, e	N	N
1,695	§300.207 Personnel development	Federal	Statute	The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA.	N	N
1,696	§300.208 Permissive use of funds	Federal	Statute	(a) Uses. Notwithstanding §§300.202, 300.203(a), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities: (1) Services and aids that also benefit nondisabled children. For the costs of special education a	N	N
1,697	§300.209 Treatment of charter schools and their students	Federal	Statute	(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part. (b) Charter schools that are public schools of the LEA. (1) In carrying out Part B of the Act and	N	N
1,698	§300.210 Purchase of instructional materials	Federal	Statute	(a) General. Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner,	N	N
1,699	§300.211 Information for SEA	Federal	Statute	The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participatin	N	N
1,700	§300.212 Public information	Federal	Statute	The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.	N	N
1,701	§300.213 Records regarding migratory children with disabilities	Federal	Statute	The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational inf	N	N

1,702	§§300.214-300.219 [Reserved]	Federal	Statute			
1,703	§300.220 Exception for prior local plans	Federal	Statute	(a) General. If an LEA or a State agency described in §300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of §300.200, including any policies and procedures filed under Part B of th	N	N
1,704	§300.221 Notification of LEA or State agency in case of ineligibility	Federal	Statute	If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must— (a) Notify the LEA or State agency of that determination; and (b) Provide the LEA or State agency with reasonable notice and an opportunity for	Y	Y
1,705	§300.222 LEA and State agency compliance	Federal	Statute	(a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.21	Y	Y
1,706	§300.223 Joint establishment of eligibility	Federal	Statute	(a) General. An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size	Y	Y
1,707	§300.224 Requirements for establishing eligibility	Federal	Statute	(a) Requirements for LEAs in general. LEAs that establish joint eligibility under this section must— (1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§300.101 through 300.163, and §§300.165 through 300	Y	Y
1,708	§300.225 [Reserved]	Federal	Statute			
1,709	§300.226 Early intervening services	Federal	Statute	(a) General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts	N	N
1,710	§300.227 Direct services by the SEA	Federal	Statute	(a) General. (1) An SEA must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for	Y	Y
1,711	§300.228 State agency eligibility	Federal	Statute	Any State agency that desires to receive a subgrant for any fiscal year under §300.705 must demonstrate to the satisfaction of the SEA that— (a) All children with disabilities who are participating in programs and projects funded under Part B of the Act	Y	Y
1,712	§300.229 Disciplinary information	Federal	Statute	(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disc	Y	Y

1,713	§300.230 SEA flexibility	Federal	Statute	(a) Adjustment to State fiscal effort in certain fiscal years. For any fiscal year for which the allotment received by a State under §300.703 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or a	Y	Y
1,714	Subpart D—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements Parental Consent §300.300 Parental consent	Federal	Statute	(a) Parental consent for initial evaluation. (1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504	N	N
1,715	Evaluations and Reevaluations §300.301 Initial evaluations	Federal	Statute	(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part. (b)	Y	
1,716	§300.302 Screening for instructional purposes is not evaluation	Federal	Statute	The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.	N	N
1,717	§300.303 Reevaluations	Federal	Statute	(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311— (1) If the public agency determines that the educational or related services needs, including improved	N	N
1,718	§300.304 Evaluation procedures	Federal	Statute	(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct. (b) Conduct of evaluation. In conducting the evaluation,	N	N
1,719	§300.305 Additional requirements for evaluations and reevaluations	Federal	Statute	(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must— (1) Review existing evaluation data on the ch	N	N
1,720	§300.306 Determination of eligibility	Federal	Statute	(a) General. Upon completion of the administration of assessments and other evaluation measures— (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accord	N	N

1,721	Additional Procedures for Identifying Children With Specific Learning Disabilities §300.307 Specific learning disabilities	Federal	Statute	(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State— (1) Must not require the use of a severe d	Y	Y
1,722	§300.308 Additional group members	Federal	Statute	The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include— (a)(1) The child's r	N	N
1,723	§300.309 Determining the existence of a specific learning disability	Federal	Statute	(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if— (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or mo	N	N
1,724	§300.310 Observation	Federal	Statute	(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. (b) The group described in §3	N	N
1,725	§300.311 Specific documentation for the eligibility determination	Federal	Statute	(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain a statement of— (1) Whether the child has a specific learning disability; (2) The basi	Y	Y
1,726	Individualized Education Programs §300.320 Definition of individualized education program	Federal	Statute	(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that mus	Y	Y
1,727	§300.321 IEP Team	Federal	Statute	(a) General. The public agency must ensure that the IEP Team for each child with a disability includes— (1) The parents of the child; (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular	Y	Y
1,728	§300.322 Parent participation	Federal	Statute	(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including— (1) Notify	N	N

1,729	§300.323 When IEPs must be in effect	Federal	Statute	(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320. (b) IEP or IFSP for children aged three through five. (1) In the case of	N	N
1,730	Development of IEP §300.324 Development, review, and revision of IEP	Federal	Statute	(a) Development of IEP—(1) General. In developing each child's IEP, the IEP Team must consider— (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent	N	N
1,731	§300.325 Private school placements by public agencies	Federal	Statute	(a) Developing IEPs. (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.32	N	N
1,732	§300.326 [Reserved]	Federal	Statute			
1,733	§300.327 Educational placements	Federal	Statute	Consistent with §300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.	N	N
1,734	§300.328 Alternative means of meeting participation	Federal	Statute	When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), th	N	N
1,735	Subpart E—Procedural Safeguards Due Process Procedures for Parents and Children §300.500 Responsibility of SEA and other public agencies	Federal	Statute	Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§300.500 through 300.536.	Y	Y
1,736	§300.501 Opportunity to examine records; parent participation in meetings	Federal	Statute	(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to— (1) The identificat	Y	Y
1,737	§300.502 Independent educational evaluation	Federal	Statute	(a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency must provide to parents,	N	N

1,738	§300.503 Prior notice by the public agency; content of notice	Federal	Statute	(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency— (1) Proposes to initiate or change the identification, evaluatio	N	N
1,739	§300.504 Procedural safeguards notice	Federal	Statute	(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents— (1) Upon initial referral or parent req	N	N
1,740	§300.505 Electronic mail	Federal	Statute	A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.	N	N
1,741	§300.506 Mediation	Federal	Statute	(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes th	N	N
1,742	§300.507 Filing a due process complaint	Federal	Statute	(a) General. (1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of	N	N
1,743	§300.508 Due process complaint	Federal	Statute	(a) General. (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential). (2) The party filing a due process complaint	N	N
1,744	§300.509 Model forms	Federal	Statute	(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 th	N	N
1,745	§300.510 Resolution process	Federal	Statute	(a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of	N	N
1,746	§300.511 Impartial due process hearing	Federal	Statute	(a) General. Whenever a due process complaint is received under §300.507 or §300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 3	N	N
1,747	§300.512 Hearing rights	Federal	Statute	(a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to— (1) Be accompanied and advised by counsel and by individuals with special kno	N	N

1,748	§300.513 Hearing decisions	Federal	Statute	(a) Decision of hearing officer on the provision of FAPE. (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds. (2) In matters alleging a procedural viola	N	N
1,749	§300.514 Finality of decision; appeal; impartial review	Federal	Statute	(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (	N	N
1,750	§300.515 Timelines and convenience of hearings and reviews	Federal	Statute	(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)— (1) A final decision is reached in the hearing; and (2) A copy of the decis	N	N
1,751	§300.516 Civil action	Federal	Statute	(a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514	N	N
1,752	§300.517 Attorneys' fees	Federal	Statute	(a) In general. (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to— (i) The prevailing party who is the parent of a child with a disability; (i	N	N
1,753	§300.518 Child's status during proceedings	Federal	Statute	(a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child ag	N	N
1,754	§300.519 Surrogate parents	Federal	Statute	(a) General. Each public agency must ensure that the rights of a child are protected when— (1) No parent (as defined in §300.30) can be identified; (2) The public agency, after reasonable efforts, cannot locate a parent; (3) The child is a ward of the	N	N
1,755	§300.520 Transfer of parental rights at age of majority	Federal	Statute	(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)— (1)(i) The pu	N	N
1,756	§§300.521-300.529 [Reserved]	Federal	Statute			

1,757	Discipline Procedures §300.530 Authority of school personnel	Federal	Statute	(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disabi	N	N
1,758	§300.531 Determination of setting	Federal	Statute	The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g).	N	N
1,759	§300.532 Appeal	Federal	Statute	(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of t	N	N
1,760	§300.533 Placement during appeals	Federal	Statute	When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(	N	N
1,761	§300.534 Protections for children not determined eligible for special education and related services	Federal	Statute	(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part	N	N
1,762	§300.535 Referral to and action by law enforcement and judicial authorities	Federal	Statute	(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities w	N	N
1,763	§300.536 Change of placement because of disciplinary removals	Federal	Statute	(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if— (1) The removal is for more than 10 consecutive school days; or (2) The child has	N	
1,764	§300.537 State enforcement mechanisms	Federal	Statute	Notwithstanding §§300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms	N	N
1,765	§§300.538-300.599 [Reserved]	Federal	Statute			
1,766	Subpart F—Monitoring, Enforcement, Confidentiality, and Program Information Monitoring, Technical Assistance, and Enforcement §300.600 State monitoring and enforcement	Federal	Statute	(a) The State must— (1) Monitor the implementation of this part; (2) Make determinations annually about the performance of each LEA using the categories in §300.603(b)(1); (3) Enforce this part, consistent with §300.604, using appropriate enforcement m	N	N

1,767	§300.601 State performance plans and data collection	Federal	Statute	(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation	Y	Y
1,768	§300.602 State use of targets and reporting	Federal	Statute	(a) General. Each State must use the targets established in the State's performance plan under §300.601 and the priority areas described in §300.600(d) to analyze the performance of each LEA. (b) Public reporting and privacy—(1) Public report. (i) Subj	Y	Y
1,769	§300.603 Secretary's review and determination regarding State performance	Federal	Statute	(a) Review. The Secretary annually reviews the State's performance report submitted pursuant to §300.602(b)(2). (b) Determination—(1) General. Based on the information provided by the State in the State's annual performance report, information obtained t	Y	Y
1,770	§300.604 Enforcement	Federal	Statute	(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under §300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions: (1) Advi	N	N
1,771	§300.605 Withholding funds	Federal	Statute	(a) Opportunity for hearing. Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§300.180 through 300.183. (b) Suspension. P	N	N
1,772	§300.606 Public attention	Federal	Statute	Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to §300.604, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of t	N	N
1,773	§300.607 Divided State agency responsibility	Federal	Statute	For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a publi	Y	Y
1,774	§300.608 State enforcement	Federal	Statute	(a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under §300.203 for any fiscal yea	Y	Y
1,775	§300.609 Rule of construction	Federal	Statute	Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA, including the provisions in 34 CFR parts 76, 77, and 81 and 2 CFR part 200 to monitor and enforce the requirements of the Act, including the impo	N	N
1,776	Confidentiality of Information §300.610 Confidentiality	Federal	Statute	The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pur	N	N

1,777	§300.611 Definitions	Federal	Statute	As used in §§300.611 through 300.625— (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (b) Education records means the type of records covered un	N	N
1,778	§300.612 Notice to parents	Federal	Statute	(a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including— (1) A description of the extent that the notice is given in the native languages of the various population groups in the State; (2) A de	Y	Y
1,779	§300.613 Access rights	Federal	Statute	(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay	Y	Y
1,780	§300.614 Record of access	Federal	Statute	Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the	Y	Y
1,781	§300.615 Records on more than one child	Federal	Statute	If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.	N	N
1,782	§300.616 List of types and locations of information	Federal	Statute	Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.	Y	Y
1,783	§300.617 Fees	Federal	Statute	(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. (b) A participating agency	Y	Y
1,784	§300.618 Amendment of records at parent's request	Federal	Statute	(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the inf	N	N
1,785	§300.619 Opportunity for a hearing	Federal	Statute	The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.	N	N

1,786	§300.620 Result of hearing	Federal	Statute	(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing. (b	N	N
1,787	§300.621 Hearing procedures	Federal	Statute	A hearing held under §300.619 must be conducted according to the procedures in 34 CFR 99.22.	N	N
1,788	§300.622 Consent	Federal	Statute	(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education	N	N
1,789	§300.623 Safeguards	Federal	Statute	(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (b) One official at each participating agency must assume responsibility for ensuring the co	Y	Y
1,790	§300.624 Destruction of information	Federal	Statute	(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of th	Y	Y
1,791	§300.625 Children's rights	Federal	Statute	(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability. (b) Und	Y	Y
1,792	§300.626 Enforcement	Federal	Statute	The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§300.611 through 300.625 are followed and that the requirements of the Act and the regulations in	Y	Y
1,793	§300.627 Department use of personally identifiable information	Federal	Statute	If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a	N	N
1,794	Reports—Program Information §300.640 Annual report of children served—report requirement	Federal	Statute	(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary. (b) The SEA must submit the report on forms provided by the Secretary	Y	Y
1,795	§300.641 Annual report of children served—information required in the report	Federal	Statute	(a) For purposes of the annual report required by section 618 of the Act and §300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date	N	N

1,796	§300.642 Data reporting	Federal	Statute	(a) Protection of personally identifiable data. The data described in section 618(a) of the Act and in §300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children. (b) Sampli	N	N
1,797	§300.643 Annual report of children served—certification	Federal	Statute	The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under §300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related serv	Y	Y
1,798	§300.644 Annual report of children served—criteria for counting children	Federal	Statute	The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that— (a) Provides them with both special education and related services that meet State standards;	Y	Y
1,799	§300.645 Annual report of children served—other responsibilities of the SEA	Federal	Statute	In addition to meeting the other requirements of §§300.640 through 300.644, the SEA must— (a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and	Y	Y
1,800	§300.646 Disproportionality	Federal	Statute	(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in	Y	Y
1,801	Subpart G—Authorization, Allotment, Use of Funds, and Authorization of Appropriations Allotments, Grants, and Use of Funds §300.700 Grants to States	Federal	Statute	(a) Purpose of grants. The Secretary makes grants to States, outlying areas, and freely associated States (as defined in §300.717), and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to ch	N	N
1,802	§300.701 Outlying areas, freely associated States, and the Secretary of the Interior	Federal	Statute	(a) Outlying areas and freely associated States—(1) Funds reserved. From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves not more than one percent, which must be used— (i) To provide assistance to the o	Y	Y
1,803	§300.702 Technical assistance	Federal	Statute	(a) In general. The Secretary may reserve not more than one-half of one percent of the amounts appropriated under Part B of the Act for each fiscal year to support technical assistance activities authorized under section 616(i) of the Act. (b) Maximum am	N	N
1,804	§300.703 Allocations to States	Federal	Statute	(a) General. After reserving funds for technical assistance under §300.702, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under §300.701 (a) and (b) for a fiscal year, the Secretary allocates the r	N	N

1,805	§300.704 State-level activities	Federal	Statute	(a) State administration. (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act with, and providing technical assistance to, othe	Y	Y
1,806	§300.705 Subgrants to LEAs	Federal	Statute	(a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under §300.704 to LEAs (including public charter schools that operate as LEAs) in the State that	Y	Y
1,807	§300.706 [Reserved]	Federal	Statute			
1,808	Secretary of the Interior §300.707 Use of amounts by Secretary of the Interior	Federal	Statute	(a) Definitions. For purposes of §§300.707 through 300.716, the following definitions apply: (1) Reservation means Indian Country as defined in 18 U.S.C. 1151. (2) Tribal governing body has the definition given that term in 25 U.S.C. 2021(19). (b) Prov	N	N
1,809	§300.708 Submission of information	Federal	Statute	The Secretary may provide the Secretary of the Interior amounts under §300.707 for a fiscal year only if the Secretary of the Interior submits to the Secretary information that— (a) Meets the requirements of section 612(a)(1), (3) through (9), (10)(B) th	N	N
1,810	§300.709 Public participation	Federal	Statute	In fulfilling the requirements of §300.708 the Secretary of the Interior must provide for public participation consistent with §300.165.	N	N
1,811	§300.710 Use of funds under Part B of the Act	Federal	Statute	(a) The Secretary of the Interior may reserve five percent of its payment under §300.707(b) in any fiscal year, or $500,000, whichever is greater, for administrative costs in carrying out the provisions of §§300.707 through 300.709, 300.711, and 300.713 t	N	N
1,812	§300.711 Early intervening services	Federal	Statute	(a) The Secretary of the Interior may allow each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior to use not more than 15 percent of the amount the school receives under §300.707(b) for any fis	N	N
1,813	§300.712 Payments for education and services for Indian children with disabilities aged three through five	Federal	Statute	(a) General. With funds appropriated under section 611(i) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Educat	N	N
1,814	§300.713 Plan for coordination of services	Federal	Statute	(a) The Secretary of the Interior must develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations served by elementary schools and secondary schools for Indian children operated or fund	N	N
1,815	§300.714 Establishment of advisory board	Federal	Statute	(a) To meet the requirements of section 612(a)(21) of the Act, the Secretary of the Interior must establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants,	N	N

1,816	§300.715 Annual reports	Federal	Statute	(a) In general. The advisory board established under §300.714 must prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year. (b) Availabil	N	N
1,817	§300.716 Applicable regulations	Federal	Statute	The Secretary of the Interior must comply with the requirements of §§300.103 through 300.108, 300.110 through 300.124, 300.145 through 300.154, 300.156 through 300.160, 300.165, 300.170 through 300.186, 300.226, 300.300 through 300.606, 300.610 through 30	N	N
1,818	Definitions that Apply to this Subpart §300.717 Definitions applicable to allotments, grants, and use of funds	Federal	Statute	As used in this subpart— (a) Freely associated States means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau; (b) Outlying areas means the United States Virgin Islands, Guam, American Samoa, and the Com	N	N
1,819	Acquisition of Equipment and Construction or Alteration of Facilities §300.718 Acquisition of equipment and construction or alteration of facilities	Federal	Statute	(a) General. If the Secretary determines that a program authorized under Part B of the Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary	N	N
1,820	Subpart H—Preschool Grants for Children with Disabilities §300.800 In general	Federal	Statute	The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act— (a) To children with disabilities aged three through five years; and (b) At a State's dis	N	N
1,821	§§300.801-300.802 [Reserved]	Federal	Statute			
1,822	§300.803 Definition of State	Federal	Statute	As used in this subpart, State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. (Authority: 20 U.S.C. 1419(i))	N	N
1,823	§300.804 Eligibility	Federal	Statute	A State is eligible for a grant under section 619 of the Act if the State— (a) Is eligible under section 612 of the Act to receive a grant under Part B of the Act; and (b) Makes FAPE available to all children with disabilities, aged three through five,	Y	N

1,824	§300.805 [Reserved]	Federal	Statute			
1,825	§300.806 Eligibility for financial assistance	Federal	Statute	No State or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children a	N	N
1,826	§300.807 Allocations to States	Federal	Statute	The Secretary allocates the amount made available to carry out section 619 of the Act for a fiscal year among the States in accordance with §§300.808 through 300.810. (Authority: 20 U.S.C. 1419(c)(1))	N	N
1,827	§300.808 Increase in funds	Federal	Statute	If the amount available for allocation to States under §300.807 for a fiscal year is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows: (a)	Y	Y
1,828	§300.809 Limitations	Federal	Statute	(a) Notwithstanding §300.808, allocations under that section are subject to the following: (1) No State's allocation may be less than its allocation under section 619 of the Act for the preceding fiscal year. (2) No State's allocation may be less than t	Y	Y
1,829	§300.810 Decrease in funds	Federal	Statute	If the amount available for allocations to States under §300.807 for a fiscal year is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows: (a) If the amount	Y	Y
1,830	§300.811 [Reserved]	Federal	Statute			
1,831	§300.812 Reservation for State activities	Federal	Statute	(a) Each State may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§300.813 and 300.814. (b) For each fiscal year, the Secretary determines and reports to	Y	Y
1,832	§300.813 State administration	Federal	Statute	(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), a State may use	Y	Y
1,833	§300.814 Other State-level activities	Federal	Statute	Each State must use any funds the State reserves under §300.812 and does not use for administration under §300.813— (a) For support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may	Y	Y
1,834	§300.815 Subgrants to LEAs	Federal	Statute	Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under §300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have estab	Y	Y

1,835	§300.816 Allocations to LEAs	Federal	Statute	(a) Base payments. The State must first award each LEA described in §300.815 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(	Y	Y
1,836	§300.817 Reallocation of LEA funds	Federal	Statute	(a) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five years residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under sect	Y	Y
1,837	§300.818 Part C of the Act inapplicable	Federal	Statute	Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under section 619 of the Act. (Authority: 20 U.S.C. 1419(h))	N	N
1,838	Appendix A to Part 300—Excess Costs Calculation	Federal	Statute	Except as otherwise provided, amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities. Excess costs are those costs for the education of	Y	N
1,839	Appendix B to Part 300—Proportionate Share Calculation	Federal	Statute	Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA a	N	N
1,840	Appendix C to Part 300—National Instructional Materials Accessibility Standard (NIMAS)	Federal	Statute	Under sections 612(a)(23)(A) and 674(e)(4) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary of Education establishes the NIMAS. Under section 674(e)(4) of	N	N
1,841	Appendix D to Part 300—Maintenance of Effort and Early Intervening Services	Federal	Statute	LEAs that seek to reduce their local maintenance of effort in accordance with §300.205(d) and use some of their Part B funds for early intervening services under §300.226 must do so with caution because the local maintenance of effort reduction provision	N	N
1,842	Appendix E to Part 300—Index for IDEA—Part B Regulations (34 CFR Part 300)	Federal	Statute			

Title 7: Agriculture

Item	Law Number	Jurisdiction	Type of Law	Statuary Requirement and/or Authority Granted	Does this law specify who (customer) the agency must or may serve? (Y/N)	Does the law specify a deliverable (product or service) the agency must or may provide? (Y/N)
1,843	PART 210—NATIONAL SCHOOL LUNCH PROGRAM	Federal	Statute			
1,844	Subpart A—General §210.1 General purpose and scope	Federal	Statute	(a) Purpose of the program. Section 2 of the National School Lunch Act (42 U.S.C. 1751), states: “It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encour	N	N
1,845	§210.2 Definitions	Federal	Statute	For the purpose of this part: 7 CFR part 3015 means the Uniform Federal Assistance Regulations published by the Department to implement certain policies applicable to all Department programs. The applicable provisions deal with competition for discretion	N	N
1,846	§210.3 Administration	Federal	Statute	(a) FNS. FNS will act on behalf of the Department in the administration of the Program. Within FNS, the CND will be responsible for Program administration. (b) States. Within the States, the responsibility for the administration of the Program in schools	Y	Y
1,847	Subpart B—Reimbursement Process for States and School Food Authorities §210.4 Cash and donated food assistance to States	Federal	Statute	(a) General. To the extent funds are available, FNS will make cash assistance available in accordance with the provisions of this section to each State agency for lunches and meal supplements served to children under the National School Lunch and Commodit	N	N
1,848	§210.5 Payment process to States	Federal	Statute	(a) Grant award. FNS will specify the terms and conditions of the State agency's grant in a grant award document and will generally make payments available by means of a Letter of Credit issued in favor of the State agency. The State agency shall obtain f	Y	Y
1,849	§210.6 Use of Federal funds	Federal	Statute	General. State agencies shall use Federal funds made available under the Program to reimburse or make advance payments to school food authorities in connection with lunches and meal supplements served in accordance with the provisions of this part; except	Y	Y
1,850	§210.7 Reimbursement for school food authorities	Federal	Statute	(a) General. Reimbursement payments to finance nonprofit school food service operations shall be made only to school food authorities operating under a written agreement with the State agency. Subject to the provisions of §210.8(c), such payments may be m	N	N

1,851	§210.8 Claims for reimbursement	Federal	Statute	(a) Internal controls. The school food authority shall establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls shall include: an on-site re	N	N
1,852	Subpart C—Requirements for School Food Authority Participation §210.9 Agreement with State agency	Federal	Statute	(a) Application. An official of a school food authority shall make written application to the State agency for any school in which it desires to operate the Program. Applications shall provide the State agency with sufficient information to determine elig	Y	Y
1,853	§210.10 Meal requirements for lunches and requirements for afterschool snacks	Federal	Statute	(a) General requirements—(1) General nutrition requirements. Schools must offer nutritious, well-balanced, and age-appropriate meals to all the children they serve to improve their diets and safeguard their health. (i) Requirements for lunch. School lunc	Y	Y
1,854	§210.10 Meal requirements for lunches and requirements for afterschool snacks continued	Federal	Statute	(c) Meal pattern for school lunches. Schools must offer the food components and quantities required in the lunch meal pattern established in the following table: Meal pattern Lunch meal pattern Grades K-5 Grades 6-8 Grades 9-12 Amount of fooda per	Y	Y
1,855	§210.10 Meal requirements for lunches and requirements for afterschool snacks continued	Federal	Statute	(1) Age/grade groups. Schools must plan menus for students using the following age/grade groups: Grades K-5 (ages 5-10), grades 6-8 (ages 11-13), and grades 9-12 (ages 14-18). If an unusual grade configuration in a school prevents the use of these establi	Y	Y
1,856	§210.10 Meal requirements for lunches and requirements for afterschool snacks continued	Federal	Statute	(3) Fluid milk substitutes. If a school chooses to offer one or more substitutes for fluid milk for non-disabled students with medical or special dietary needs, the nondairy beverage(s) must provide the nutrients listed in the following table. Fluid milk	Y	Y
1,857	§210.10 Meal requirements for lunches and requirements for afterschool snacks continued	Federal	Statute	(2) Saturated fat. School lunches offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from saturated fat. (3) Sodium. Schools lunches offered to each age/grade group must meet, on average	Y	Y
1,858	§210.10 Meal requirements for lunches and requirements for afterschool snacks continued	Federal	Statute	(4) Trans fat. Food products and ingredients used to prepare school meals must contain zero grams of trans fat (less than 0.5 grams) per serving. Schools must add the trans fat specification and request the required documentation (nutrition label or manuf	Y	Y

1,859	§210.10 Meal requirements for lunches and requirements for afterschool snacks continued	Federal	Statute	Supplements for Infants Birth through 3 months 4 through 7 months 8 through 11 months Supplement (snack) 4-6 fl. oz. breastmilk1 2 or formula3 4-6 fl. oz. breastmilk1 2 or formula3 2-4 fl. oz. breastmilk1 2, formula3, or fruit juice4; 0-1/2 b	Y	Y
1,860	§210.10 Meal requirements for lunches and requirements for afterschool snacks continued	Federal	Statute	(3) Nutrient and calorie levels. The minimum levels of nutrients and calories that lunches for preschoolers must offer are specified in the following table: Minimum Nutrient and Calorie Levels for Lunches—Traditional Food-Based Menu Planning Approach1 N	Y	Y
1,861	§210.10 Meal requirements for lunches and requirements for afterschool snacks continued	Federal	Statute	(ii) Meat/meat alternate component.—The quantity of the meat/meat alternate component must be the edible portion as served. If the portion size of a food item for this component is excessive, the school must reduce that portion and supplement it with anot	Y	Y
1,862	§210.10 Meal requirements for lunches and requirements for afterschool snacks continued	Federal	Statute	Lunch Pattern for Infants Birth through 3 months 4 through 7 months 8 through 11 months 4-6 fluid ounces of formula1 or breastmilk2 3 4-8 fluid ounces of formula1 or breastmilk2 3; and 0-3 tablespoons of infant cereal1 4; and 0-3 tablespoons of fruits o	Y	Y
1,863	§210.11 Competitive food service and standards	Federal	Statute	(a) Definitions. For the purpose of this section: (1) Combination foods means products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein or grains. (2) Competitive food means al	N	N
1,864	§210.11a Competitive food services	Federal	Statute	(a) Definitions. For the purpose of this section: (1) Competitive foods means any foods sold in competition with the Program to children in food service areas during the lunch periods. (2) Food of minimal nutritional value means: (i) In the case of arti	N	N
1,865	§210.12 Student, parent and community involvement	Federal	Statute	(a) General. School food authorities shall promote activities to involve students and parents in the Program. Such activities may include menu planning, enhancement of the eating environment, Program promotion, and related student-community support activi	Y	Y

1,866	§210.13 Facilities management	Federal	Statute	(a) Health standards. The school food authority shall ensure that food storage, preparation and service is in accordance with the sanitation and health standards established under State and local law and regulations. (b) Food safety inspections. Schools	Y	Y
1,867	§210.14 Resource management	Federal	Statute	(a) Nonprofit school food service. School food authorities shall maintain a nonprofit school food service. Revenues received by the nonprofit school food service are to be used only for the operation or improvement of such food service, except that, such	N	N
1,868	§210.15 Reporting and recordkeeping	Federal	Statute	(a) Reporting summary. Participating school food authorities are required to submit forms and reports to the State agency or the distributing agency, as appropriate, to demonstrate compliance with Program requirements. These reports include, but are not l	Y	Y
1,869	§210.16 Food service management companies	Federal	Statute	(a) General. Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school	Y	Y
1,870	Subpart D—Requirements for State Agency Participation §210.17 Matching Federal funds	Federal	Statute	(a) State revenue matching. For each school year, the amount of State revenues appropriated or used specifically by the State for program purposes shall not be less than 30 percent of the funds received by such State under section 4 of the National School	Y	Y
1,871	§210.18 Administrative reviews	Federal	Statute	(a) Implementation dates. Each State agency must follow the requirements of this section to conduct administrative reviews of school food authorities serving meals under parts 210 and 220 of this chapter. For school food authorities selected for administr	Y	Y
1,872	§210.18 Administrative reviews continued	Federal	Statute	(1) Minimum number of schools. Except for residential child care institutions, the State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event shall the S	Y	Y
1,873	§210.18 Administrative reviews continued	Federal	Statute	(2) In lieu of reviewing all of the free and reduced price applications as required under paragraph (g)(1)(i)(A)(1) of this section, the State agency may review a statistically valid sample of those applications. If the State agency chooses to review a st	Y	Y
1,874	§210.18 Administrative reviews continued	Federal	Statute	(i) Follow-up reviews. All school food authorities found to have a critical area violation in excess of any one of the review thresholds specified in this paragraph are subject to follow-up reviews. State agencies shall notify FNS of the names of large sc	Y	Y

1,875	§210.18 Administrative reviews continued	Federal	Statute	Table B Number of schools reviewed Number of schools violating performance standard 1 1 to 5 1 6 to 10 2 11 to 20 3 21 to 30 4 31 to 40 5 41 to 50 6 51 to 60 7 61 to 70 8 71 to 80 9 81 to 90 10 91 to 100 11 101 or more 11*	Y	Y
1,876	§210.18 Administrative reviews continued	Federal	Statute	(6) General area violations identified in a follow-up review. General area violations identified in a follow-up review shall be addressed as follows: (i) If, during a follow-up review, the State agency determines that corrective actions have not been tak	Y	Y
1,877	§210.18 Administrative reviews continued	Federal	Statute	(2) Duration. In all cases, Program payments shall be withheld until such time as corrective action is completed, and documented corrective action is received and deemed acceptable by the State agency or as otherwise specified in paragraph (i)(5) of this	Y	Y
1,878	§210.18 Administrative reviews continued	Federal	Statute	(q) School food authority appeal of State agency findings. Except for FNS-conducted reviews authorized under §210.29(d)(2), each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of	Y	Y
1,879	§210.19 Additional responsibilities	Federal	Statute	(a) General Program management. Each State agency shall provide an adequate number of consultative, technical and managerial personnel to administer programs and monitor performance in complying with all Program requirements. (1) Assurance of compliance	Y	Y
1,880	§210.19 Additional responsibilities continued	Federal	Statute	(iii) In taking fiscal action, State agencies shall assume that children determined by the reviewer to be incorrectly approved for free and reduced price lunches participated at the same rate as correctly approved children in the corresponding lunch categ	Y	Y
1,881	§210.20 Reporting and recordkeeping	Federal	Statute	(a) Reporting summary. Participating State agencies shall submit forms and reports to FNS to demonstrate compliance with Program requirements. The reports include but are not limited to: (1) Requests for cash to make reimbursement payments to school food	Y	Y

1,882	Subpart E—State Agency and School Food Authority Responsibilities §210.21 Procurement	Federal	Statute	(a) General. State agencies and school food authorities shall comply with the requirements of this part and 7 CFR part 3016 or 7 CFR part 3019, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procure	Y	Y
1,883	§210.22 Audits	Federal	Statute	(a) General. Unless otherwise exempt, audits at the State and school food authority levels shall be conducted in accordance with Office of Management and Budget Circular A-133 and the Department's implementing regulations at 7 CFR part 3052. For availabil	Y	Y
1,884	§210.23 Other responsibilities	Federal	Statute	(a) Free and reduced price lunches and meal supplements. State agencies and school food authorities shall ensure that lunches and meal supplements are made available free or at a reduced price to all children who are determined by the school food authorit	Y	Y
1,885	Subpart F—Additional Provisions §210.24 Withholding payments	Federal	Statute	In accordance with Departmental regulations at §§3016.43 and 3019.62 of this title, the State agency shall withhold Program payments, in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Program pa	Y	Y
1,886	§210.25 Suspension, termination and grant closeout procedures	Federal	Statute	Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be avai	Y	Y
1,887	§210.26 Penalties	Federal	Statute	Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part whether received directly or indirectly from the Department, shall if such funds, assets, or property are of a value of $100 or mo	N	N
1,888	§210.27 Educational prohibitions	Federal	Statute	In carrying out the provisions of the Act, the Department shall not impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in	N	N
1,889	§210.28 Pilot project exemptions	Federal	Statute	Those State agencies or school food authorities selected for the pilot projects mandated under section 18(d) of the Act may be exempted by the Department from some or all of the counting and free and reduced price application requirements of this part and	Y	Y
1,890	§210.29 Management evaluations	Federal	Statute	(a) Management evaluations. FNS will conduct a comprehensive management evaluation of each State agency's administration of the National School Lunch Program. (b) Basis for evaluations. FNS will evaluate all aspects of State agency management of the Prog	Y	Y
1,891	§210.30 State agency and Regional office addresses	Federal	Statute	School food authorities and schools desiring information about the Program should contact their State educational agency or the appropriate FNS Regional Office at the address or telephone number listed on the FNS Web site (www.fns.usda.gov/cnd). [77 FR 4	N	N

1,892	§210.31 OMB control numbers	Federal	Statute	The following control numbers have been assigned to the information collection requirements in 7 CFR part 210 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. 7 CFR section where requirements are des	N	N
1,893	§210.32 xxx	Federal	Statute			
1,894	Appendix A to Part 210—Alternate Foods for Meals	Federal	Statute	I. Enriched Macaroni Products with Fortified Protein 1. Schools may utilize the enriched macaroni products with fortified protein defined in paragraph 3 as a food item in meeting the meal requirements of this part under the following terms and conditions	Y	Y
1,895	Appendix A to Part 210—Alternate Foods for Meals continued	Federal	Statute	II. Alternate Protein Products A. What Are the Criteria for Alternate Protein Products Used in the National School Lunch Program? 1. An alternate protein product used in meals planned under the food-based menu planning approaches in §210.10(k), must meet	Y	Y
1,896	Appendix B to Part 210—Categories of Foods of Minimal Nutritional Value	Federal	Statute	(a) Foods of minimal nutritional value—Foods of minimal nutritional value are: (1) Soda Water—A class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the be	Y	Y
1,897	Appendix C to Part 210—Child Nutrition Labeling Program	Federal	Statute	1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S.	Y	Y
1,898	Title 7: Agriculture PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS	Federal	Statute			
1,899	§245.1 General purpose and scope	Federal	Statute	(a) This part established the responsibilities of State agencies, Food and Nutrition Service Regional Offices, school food authorities or local educational agencies, as defined in §245.2, as applicable in providing free and reduced price meals and free mi	N	N
1,900	§245.2 Definitions	Federal	Statute	Adult means any individual 21 years of age or older. Categorically eligible means considered income eligible for free meals or free milk, as applicable, based on documentation that a child is a member of a Family, as defined in this section, and one or m	N	N
1,901	§245.3 Eligibility standards and criteria	Federal	Statute	(a) Each State agency, or FNSRO where applicable, shall by July 1 of each year announce family-size income standards to be used by local educational agencies, as defined in §245.2, under the jurisdiction of such State agency, or FNSRO where applicable, in	Y	Y

1,902	§245.4 Exceptions for Puerto Rico and the Virgin Islands	Federal	Statute	Because the State agencies of Puerto Rico and the Virgin Islands provide free meals or milk to all children in schools under their jurisdiction, regardless of the economic need of the child's family, they are not required to make individual eligibility de	Y	Y
1,903	§245.5 Public announcement of the eligibility criteria	Federal	Statute	(a) After the State agency, or FNSRO where applicable, notifies the local educational agency (as defined in §245.2) that its criteria for determining the eligibility of children for free and reduced price meals and for free milk have been approved, the lo	Y	Y
1,904	§245.6 Application, eligibility and certification of children for free and reduced price meals and free milk	Federal	Statute	(a) General requirements—content of application and descriptive materials. Each local educational agency, as defined in §245.2, for schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or a commodity	Y	Y
1,905	§245.6 Application, eligibility and certification of children for free and reduced price meals and free milk continued	Federal	Statute	(2) Children who may be directly certified. The local educational agency may directly certify children for free meals or free milk based on documentation received from the appropriate State or local agency that administers FDPIR or TANF, as defined in §24	Y	Y
1,906	§245.6 Application, eligibility and certification of children for free and reduced price meals and free milk continued	Federal	Statute	(ii) Foster, homeless, migrant, andrunaway children and Head Start enrollees. Upon receipt of Documentation, as defined in paragraph (2)(ii) and (2)(iv) of the definition in §245.2, the local educational agency must approve such children for free benefits	Y	Y
1,907	§245.6a Verification requirements	Federal	Statute	(a) Definitions—(1) Eligible programs. For the purposes of this section, the following programs qualify as programs for which a case number may be provided in lieu of income information and that may be used for direct verification purposes: (i) SNAP, as	N	N
1,908	§245.6a Verification requirements	Federal	Statute	(2) Exceptions from verification. Verification is not required in residential child care institutions; in schools in which FNS has approved special cash assistance claims based on economic statistics regarding per capita income; or in schools in which all	N	N
1,909	§245.7 Hearing procedure for families and local educational agencies	Federal	Statute	(a) Each local educational agency of a school participating in the National School Lunch Program, School Breakfast Program or the Special Milk Program or of a commodity only school shall establish a hearing procedure under which: (1) A family can appeal	N	N
1,910	§245.8 Nondiscrimination practices for children eligible to receive free and reduced price meals and free milk	Federal	Statute	School Food Authorities and local educational agencies of schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of commodity only schools shall take all actions that are necessary to insure complia	N	N
1,911	§245.9 Special assistance certification and reimbursement alternatives	Federal	Statute	(a) Provision 1. A School Food Authority of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price meals may, at its option, authorize the school to reduce annual certification and public notification fo	Y	Y

1,912	§245.9 Special assistance certification and reimbursement alternatives continued	Federal	Statute	(A) Enrollment based percentages. In accordance with guidance established by the Food and Nutrition Service, establish a new Provision 2 base year by determining program eligibility on the basis of household size and income, and direct certification if ap	Y	Y
1,913	§245.9 Special assistance certification and reimbursement alternatives continued	Federal	Statute	(i) Available and approved sources of socioeconomic data. Pre-approved sources of socioeconomic data which may be used by school food authorities to establish the income level of the school's population are: local data collected by the city or county zoni	Y	Y
1,914	§245.10 Action by local educational agencies	Federal	Statute	(a) Each local educational agencyof a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to	N	N
1,915	§245.11 Second review of applications	Federal	Statute	(a) General. On an annual basis not later than the end of each school year, State agencies must identify local educational agencies demonstrating a high level of, or risk for, administrative error associated with certification processes and notify the aff	N	N
1,916	§245.12 Action by State agencies and FNSROs	Federal	Statute	(a) Each State agency, or FNSRO where applicable, shall, for schools under its jurisdiction: (1) As necessary, each State agency or FNSRO, as applicable, shall issue a prototype free and reduced price policy statement and any other instructions to ensure	Y	Y
1,917	§245.13 State agencies and direct certification requirements	Federal	Statute	(a) Direct certification requirements. State agencies are required to meet the direct certification performance benchmarks set forth in paragraph (b) of this section for directly certifying children who are members of households receiving assistance under	Y	Y
1,918	§245.14 Fraud penalties	Federal	Statute	(a) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall— (1) If such funds, assets, or property are of a value of	N	N
1,919	§245.15 Information collection/recordkeeping—OMB assigned control numbers	Federal	Statute	7 CFR section where requirements are described Current OMB control number 245.3 (a), (b) 0584-0026 245.4 0584-0026 245.5 (a), (b) 0584-0026 245.6 (a), (b), (c), (e) 0584-0026 245.7(a) 0584-0026 245.9 (a), (b), (c) 0584-0026 245.10 (a), (d), (e) 058	Y	Y
1,920	Title 7: Agriculture PART 220—SCHOOL BREAKFAST PROGRAM	Federal	Statute			

1,921	§220.1 General purpose and scope	Federal	Statute	This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 4 of the Child Nutrition Act of 1966, as amended, which authorizes payments to the States to assist them to initiate, maintain, or expand nonp	N	N
1,922	§220.2 Definitions	Federal	Statute	For the purpose of this part the term: 7 CFR part 3015 means the Uniform Federal Assistance Regulations published by the Department to implement certain policies applicable to all Department programs. The applicable provisions deal with competition for d	N	N
1,923	§220.3 Administration	Federal	Statute	(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program covered by this part. Within FNS, CND shall be responsible for administration of the Program. (b) Within the States, responsibility for the administ	N	N
1,924	§220.4 Payment of funds to States and FNSROs	Federal	Statute	(a) To the extent funds are available, the Secretary shall make breakfast assistance payments to each State agency for breakfasts served to children under the Program. Subject to §220.13(b)(2), the total of these payments for each State for any fiscal yea	N	N
1,925	§220.5 Method of payment to States	Federal	Statute	Funds to be paid to any State for the School Breakfast Program shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall: (a) Obtain funds needed for reimbursement to School Food Authorities	N	N
1,926	§220.6 Use of funds	Federal	Statute	(a) Federal funds made available under the School Breakfast Program shall be used by State agencies, or FNSROs where applicable, to reimburse or make advance payments to School Food Authorities in connection with breakfasts served in accordance with the p	Y	Y
1,927	§220.7 Requirements for participation	Federal	Statute	(a) The School Food Authority shall make written application to the State agency, or FNSRO where applicable, for any school in which it desires to operate the School Breakfast Program, if such school did not participate in the Program in the prior fiscal	N	N
1,928	§220.8 Meal requirements for breakfasts	Federal	Statute	(a) General requirements. This section contains the meal requirements applicable to school breakfasts for students in grades K to 12. With the exception of the milk component, the meal requirements must be implemented beginning July 1, 2013 or as otherwis	N	N
1,929	§220.8 Meal requirements for breakfasts continued	Federal	Statute	(c) Meal pattern for school breakfasts. A school must offer the food components and quantities required in the breakfast meal pattern established in the following table: Breakfast meal pattern Grades K-5 Grades 6-8 Grades 9-12 Meal pattern Amount of	N	N

1,930	§220.8 Meal requirements for breakfasts continued	Federal	Statute	(1) Age/grade groups. Effective July 1, 2013 (SY 2013-2014), schools must plan menus for students using the following age/grade groups: Grades K-5 (ages 5-10), grades 6-8 (ages 11-13), and grades 9-12 (ages 14-18). If an unusual grade configuration in a s	N	N
1,931	§220.8 Meal requirements for breakfasts continued	Federal	Statute	(f) Dietary specifications. (1) Calories. Effective July 1, 2013 (SY 2013-2014), school breakfasts offered to each age/grade group must meet, on average over the school week, the minimum and maximum calorie levels specified in the following table: Calori	N	N
1,932	§220.8 Meal requirements for breakfasts continued	Federal	Statute	(3) Sodium. School breakfasts offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the specified deadlines: Sodium Reduction: Timeline & Amount Age/grade group Baseline:	N	N
1,933	§220.8 Meal requirements for breakfasts continued	Federal	Statute	(i) State agency responsibilities for nutrient analysis. State agencies must conduct a weighted nutrient analysis of all foods offered in a reimbursable breakfast by a school selected for administrative review to determine the average levels of calories,	Y	Y
1,934	§220.8 Meal requirements for breakfasts continued	Federal	Statute	(2) Nutrient and calorie levels for breakfasts for preschoolers. Under the traditional food-based menu planning approach, the required levels are: Minimum Nutrient and Calorie Levels for School Breakfasts [Traditional Food-Based Menu Planning Approach]	N	N
1,935	§220.8 Meal requirements for breakfasts continued	Federal	Statute	(ii) Quantities for the traditional food-based menu planning approach. At a minimum, schools must offer the food items in the quantities specified for the appropriate age/grade group in the following table: Traditional Food-Based Menu Planning Approach M	N	N
1,936	§220.8 Meal requirements for breakfasts continued	Federal	Statute	(iii) Offer versus serve. Schools must offer all four required food items. At the school food authority's option, students in preschool may decline one of the four food items. The price of a reimbursable breakfast does not change if the student does not t	N	N
1,937	§220.8 Meal requirements for breakfasts continued	Federal	Statute	(v) Infant meal pattern table. The minimum amounts of food components to serve to infants, as described in paragraph (o)(11)(iv) of this section, are: Breakfast Pattern for Infants Birth through 3 months 4 through 7 months 8 through 11 months 4-6 fluid	N	N

1,938	§220.9 Reimbursement payments	Federal	Statute	(a) State agencies, or FNSRO's where applicable, shall make reimbursement payments to schools only in connection with breakfasts meeting the requirements of §220.8, and reported in accordance with §220.11(b) of this part. School Food Authorities shall pla	Y	Y
1,939	§220.10 Effective date for reimbursement	Federal	Statute	Reimbursement payments under the School Breakfast Program may be made only to School Food Authorities operating under an agreement with the State Agency or the Department, and may be made only after execution of the agreement. Such payments may include re	Y	Y
1,940	§220.11 Reimbursement procedures	Federal	Statute	(a) To be entitled to reimbursement under this part, each School Food Authority shall submit to the State agency, or FNSRO where applicable, a monthly Claim for Reimbursement. (b) Claims for Reimbursement shall include data in sufficient detail to justif	Y	Y
1,941	§220.12 Competitive food services	Federal	Statute	School food authorities must comply with the competitive food service and standards requirements specified in §210.11 of this chapter. [78 FR 39093, June 28, 2013]	N	N
1,942	§220.12a Competitive food services	Federal	Statute	(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with breakfasts served under the Program. Such rules or regulations shall prohibit the sale of foods of m	Y	Y
1,943	§220.13 Special responsibilities of State agencies	Federal	Statute	(a) [Reserved] (a-1) Each State agency, or FNSRO where applicable, shall require each School Food Authority of a school participating in the School Breakfast Program to develop and file for approval a free and reduced price policy statement in accordance	Y	Y
1,944	§220.14 Claims against school food authorities	Federal	Statute	(a) State agencies shall disallow any portion of a claim and recover any payment made to a School Food Authority that was not properly payable under this part. State agencies will use their own procedures to disallow claims and recover overpayments alread	Y	Y
1,945	§220.15 Management evaluations and audits	Federal	Statute	(a) Unless otherwise exempt, audits at the State and institution levels shall be conducted in accordance with Office of Management and Budget Circular A-133 and the Department's implementing regulations at 7 CFR part 3052. For availability of the OMB Circ	N	N
1,946	§220.16 Procurement standards	Federal	Statute	(a) General. State agencies and school food authorities shall comply with the requirements of this part and parts 3015, 3016 and 3019 of this title, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the pr	Y	Y

1,947	§220.17 Prohibitions	Federal	Statute	(a) In carrying out the provisions of this part, the Department shall not impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, and materials of instruction in any school as a condition for participa	N	N
1,948	§220.18 Withholding payments	Federal	Statute	In accordance with Departmental regulations at §§3016.43 and 3019.62 of this title, the State agency shall withhold Program payments, in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Program pa	Y	Y
1,949	§220.19 Suspension, termination and grant closeout procedures	Federal	Statute	Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be avai	Y	Y
1,950	§220.20 Free and reduced price breakfasts	Federal	Statute	The determination of the children to whom free and reduced price breakfasts are to be served because of inability to pay the full price thereof, and the serving of the breakfasts to such children, shall be effected in accordance with part 245 of this chap	N	N
1,951	§220.21 Program information	Federal	Statute	School Food Authorities desiring information concerning the program should write to their State educational agency or to the appropriate Food and Nutrition Service Regional Office as indicated below: (a) In the States of Delaware, District of Columbia, M	N	N
1,952	§220.22 Information collection/recordkeeping—OMB assigned control numbers	Federal	Statute	7 CFR section where requirements are described Current OMB control number 220.3(e) 0584-0327 220.5 0584-0012 220.7(a)-(e) 0584-0329 0584-0012 0584-0026 220.8(f) 0584-0012 220.9(a) 0584-0012 220.11 (a), (b), (e) 0584-0012 0584-0002 0584-0341	N	N
1,953	§220.23 Nutrition standards and menu planning approaches for breakfasts	Federal	Statute	(a) What are the nutrition standards for breakfasts for children age 2 and over? This section contains the requirements applicable to school breakfasts for children age 2 and over in school years 2012-2013 through 2013-14. All of the requirements of this	N	N
1,954	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(6) Schools must keep production and menu records for the breakfasts they produce. These records must show how the breakfasts contribute to the required food components, food items or menu items every day. In addition, these records must show how the brea	N	N

1,955	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(2) Optional levels are: Optional Minimum Nutrient and Calorie Levels for School Breakfasts Nutrient Standard Meal Planning Approaches (School Week Averages) Nutrients and energy allowances Ages 3-6 Ages 7-10 Ages 11-13 Ages 14 and above Calories (kca	Y	Y
1,956	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(c) What are the nutrient and calorie levels for breakfasts planned under the food-based menu planning approaches?—(1) Traditional approach. For the traditional food-based menu planning approach, the required levels are: Minimum Nutrient and Calorie Leve	Y	Y
1,957	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(2) Enhanced approach. For the enhanced food-based menu planning approach, the required levels are: Minimum Nutrient and Calorie Levels for School Breakfasts Enhanced Food-Based Menu Planning Approach (School Week Averages) Nutrients and energy allowan	Y	Y
1,958	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(ii) Requisites for milk substitutions. (A) A school food authority must inform the State agency if any of its schools choose to offer fluid milk substitutes other than for students with disabilities; and (B) A medical authority or the student's parent o	Y	Y
1,959	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(2) Quantities for the traditional food-based menu planning approach. At a minimum, schools must offer the food items in the quantities specified for the appropriate age/grade group in the following table: Traditional Food-Based Menu Planning Approach—Me	Y	Y
1,960	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(3) Quantities for the enhanced food-based menu planning approach. At a minimum, schools must offer the food items in the quantities specified for the appropriate age/grade group in the following table: Enhanced Food-Based Menu Planning Approach-Meal Pat	Y	Y
1,961	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(4) Offer versus serve. Each school must offer all four required food items listed in paragraph (g)(1) of this section. At the option of the school food authority, each school may allow students to refuse one food item from any component. The refused food	Y	Y
1,962	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(3) Milk substitutes. If a school chooses to offer one or more substitutes for fluid milk for non-disabled students with medical or special dietary needs, the nondairy beverage(s) must provide the nutrients listed in the following table. Milk substitutes	Y	Y

1,963	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(4) Infant meal pattern. Infant breakfasts must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk	Y	Y
1,964	§220.23 Nutrition standards and menu planning approaches for breakfasts continued	Federal	Statute	(k) What about serving additional foods? Schools may offer additional foods with breakfasts to children over one year of age. (l) Must schools offer choices at breakfast? FNS encourages schools to offer children a selection of foods and menu items at bre	Y	Y
1,965	Appendix A to Part 220—Alternate Foods for Meals	Federal	Statute	Alternate Protein Products A. What Are the Criteria for Alternate Protein Products Used in the School Breakfast Program? 1. An alternate protein product used in meals planned under the food-based menu planning approaches in §220.8(g), must meet all of th	Y	Y
1,966	Appendix B to Part 220—Categories of Foods of Minimal Nutritional Value	Federal	Statute	(1) Soda Water—A class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of 60 °F. It either	N	N
1,967	Appendix B to Part 220—Categories of Foods of Minimal Nutritional Value	Federal	Statute	(c) Appendix B remains in effect through June 30, 2014.	N	N
1,968	Appendix C to Part 220—Child Nutrition (CN) Labeling Program	Federal	Statute	1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of th	Y	Y
1,969	Title 7: Agriculture PART 215—SPECIAL MILK PROGRAM FOR CHILDREN	Federal	Statute			
1,970	§215.1 General purpose and scope	Federal	Statute	This part announces the policies and prescribes the general regulations with respect to the Special Milk Program for Children, under the Child Nutrition Act of 1966, as amended, and sets forth the general requirements for participation in the program. The	N	N
1,971	§215.2 Definitions	Federal	Statute	For the purpose of this part, the term: 7 CFR part 3015 means the Uniform Federal Assistance Regulations published by the Department to implement certain policies applicable to all Department programs. The applicable provisions deal with competition for	N	N

1,972	§215.3 Administration	Federal	Statute	(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, CND shall be responsible for Program administration. (b) Within the States, to the extent practicable and permissible under State law	N	N
1,973	§215.4 Payments of funds to States and FNSROs	Federal	Statute	(a) For each fiscal year, the Secretary shall make payments to each State agency at such times as he may determine from the funds appropriated for Program reimbursement. Subject to §215.11(c)(2), the total of these payments for each State for any fiscal y	Y	Y
1,974	§215.5 Method of payment to States	Federal	Statute	(a) Funds to be paid to any State shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall: (1) Obtain funds needed to reimburse School Food Authorities and child-care institutions through p	N	N
1,975	§215.6 Use of funds	Federal	Statute	(a) Federal funds made available under the Program shall be used to encourage the consumption of milk through reimbursement payments to schools and child-care institutions in connection with the purchase and service of milk to children in accordance with	Y	Y
1,976	§215.7 Requirements for participation	Federal	Statute	(a) Any school or nonprofit child care institution shall receive the Special Milk Program upon request provided it does not participate in a meal service program authorized under the Child Nutrition Act of 1966 or the National School Lunch Act; except tha	Y	Y
1,977	§215.8 Reimbursement payments	Federal	Statute	(a) [Reserved] (b)(1) The rate of reimbursement per half-pint of milk purchased and (i) served in nonpricing programs to all children; (ii) served to all children in pricing programs by institutions and School Food Authorities not electing to provide fre	Y	Y
1,978	§215.9 Effective date for reimbursement	Federal	Statute	(a) A State Agency, or FNSRO where applicable, may grant written approval to begin operations under the Program prior to the receipt of the application from the School Food Authority or child-care institution. Such written approval shall be attached to th	N	N
1,979	§215.10 Reimbursement procedures	Federal	Statute	(a) To be entitled to reimbursement under this part, each School Food Authority shall submit to the State agency, or FNSRO where applicable, a monthly Claim for Reimbursement. (b) Claims for Reimbursement shall include data in sufficient detail to justif	N	N

1,980	§215.11 Special responsibilities of State agencies	Federal	Statute	(a) [Reserved] (b) Program assistance. Each State agency, or FNSRO where applicable, shall provide Program assistance, as follows: (1) Consultive, technical, and managerial personnel to administer the Program and monitor performance of schools and child	Y	Y
1,981	§215.12 Claims against schools or child-care institutions	Federal	Statute	(a) State agencies, or FNSROs where applicable, shall disallow any portion of a claim and recover any payment made to a School Food Authority or child-care institution that was not properly payable under this part. State agencies will use their own proced	Y	Y
1,982	§215.13 Management evaluations and audits	Federal	Statute	(a) Unless otherwise exempt, audits at the State and school food authority/child care institution levels shall be conducted in accordance with Office of Management and Budget Circular A-133 and the Department's implementing regulations at 7 CFR part 3052.	N	N
1,983	§215.13a Determining eligibility for free milk in child-care institutions	Federal	Statute	(a) General. Child care institutions which operate pricing programs may elect to make free milk available, as set forth in §215.7(d)(2), to children who meet the approved eligibility criteria. Such child care institutions shall determine the children who	N	N
1,984	§215.14a Procurement standards	Federal	Statute	(a) General. State agencies and school food authorities shall comply with the requirements of this part and parts 3015, 3016 and 3019 of this title, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the pr	Y	Y
1,985	§215.15 Withholding payments	Federal	Statute	In accordance with Departmental regulations at §§3016.43 and 3019.62 of this title, the State agency shall withhold Program payments in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Program pay	N	N
1,986	§215.16 Suspension, termination and grant closeout procedures	Federal	Statute	Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be avai	N	N
1,987	§215.17 Program information	Federal	Statute	School Food Authorities and child-care institutions desiring information concerning the Program should write to their State educational agency, or the appropriate Food and Nutrition Service Regional Office of FNS as indicated below: (a) In the States of	N	N

1,988	§215.18 Information collection/recordkeeping—OMB assigned control numbers	Federal	Statute	7 CFR section where requirements are described Current OMB control number 215.3(d) 0584-0327 215.5(a) 0584-0005 0584-0002 215.5(c) 0584-0341 215.7 (a), (c) 0584-0005 215.7 (b)(2) 0584-0026 215.7(d) 0584-0329 0584-0005 215.10 (a), (b), (d)	N	N
1,989	Title 7: Agriculture PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS	Federal	Statute			
1,990	§235.1 General purpose and scope	Federal	Statute	This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 7 of the Child Nutrition Act of 1966, as amended. It prescribes the methods for making payments of funds to State agencies for use for adminis	N	N
1,991	§235.2 Definitions	Federal	Statute	For the purpose of this part, the term: 7 CFR part 3015 means the Uniform Federal Assistance Regulations published by the Department to implement certain policies applicable to all Department programs. The applicable provisions deal with competition for	N	N
1,992	§235.3 Administration	Federal	Statute	(a) Within the Department, FNS shall act on behalf of the Department in the administration of the program for payment to States of State administrative expense funds covered by this part. Within FNS, CND shall be responsible for administration of the prog	Y	Y
1,993	§235.4 Allocation of funds to States	Federal	Statute	(a) Nondiscretionary SAE Funds. For each fiscal year, FNS shall allocate the following: (1) To each State which administers the National School Lunch, School Breakfast or Special Milk Programs an amount equal to one (1) percent of the funds expended by s	Y	Y
1,994	§235.5 Payments to States	Federal	Statute	(a) Method of payment. FNS will specify the terms and conditions of the State agency's annual grant of SAE funds in conjunction with the grant award document and will make funds available for payment by means of a Letter of Credit issued in favor of the S	Y	Y
1,995	§235.6 Use of funds	Federal	Statute	(a) Funds allocated under this part and 7 CFR part 225 shall be used for State agency administrative costs incurred in connection with the programs governed by 7 CFR parts 210, 215, 220, 225, 226, and 250 of this title. Except as provided under §235.6(c),	N	N

1,996	§235.7 Records and reports	Federal	Statute	(a) Each State agency shall keep records on the expenditure of State administrative expense funds provided under this part and part 225 of this title. Such records shall conform with the applicable State plan for use of State administrative expense funds.	Y	Y
1,997	§235.8 Management evaluations and audits	Federal	Statute	(a) Unless otherwise exempt, audits at the State level shall be conducted in accordance with Office of Management and Budget Circular A-133, and the Department's implementing regulations at 7 CFR part 3052. (To obtain the OMB circular referenced in this d	N	N
1,998	§235.9 Procurement and property management standards	Federal	Statute	(a) Requirements. State agencies shall comply with the requirements of 7 CFR part 3016 concerning the procurement of supplies, equipment and other services with State Administrative Expense Funds. (b) Contractual responsibilities. The standards containe	Y	Y
1,999	§235.10 [Reserved]	Federal	Statute			
2,000	§235.11 Other provisions	Federal	Statute	(a) State funds. Expenditures of funds from State sources in any fiscal year for the administration of the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program shall not be less than that expende	Y	Y
2,001	§235.12 Information collection/recordkeeping—OMB assigned control numbers	Federal	Statute	7 CFR section where requirements are described Current OMB control number 235.3(b) 0584-0067 235.4(d), (e) 0584-0067 235.7(a) 0584-0067 235.7(b) 0584-0067 235.7(c) 0584-0067 235.8(a), (b) 0584-0067 235.9(c), (d) 0584-0067 235.11(b)(2) 0584-0067 2	N	N
2,002	Title 7: Agriculture PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION	Federal	Statute		N	N
2,003	Subpart A—General §250.1 General purpose and scope	Federal	Statute	This part prescribes the terms and conditions under which donated foods may be obtained from the Department by Federal, State and private agencies for use in any State in child nutrition programs, nonprofit summer camps for children, charitable institutio	N	N

2,004	§250.2 Administration	Federal	Statute	(a) Delegation to FNS. Within the Department, FNS shall act on behalf of the Department in the administration of the program. FNS will provide assistance to distributing agencies and evaluate all levels of program operations to assure that the goals of th	N	N
2,005	§250.3 Definitions	Federal	Statute	7 CFR part 3016 means the Department's regulations establishing uniform administrative requirements for Federal grants and cooperative agreements and subawards to State, local, and Indian tribal governments. 7 CFR part 3019 means the Department's regulat	N	N
2,006	Subpart B—General Operating Provisions §250.10 Eligible distributing and subdistributing agencies	Federal	Statute	(a) State and Federal agencies. Federal agencies and such State agencies as are designated by the Governor of the State, or by the State legislature, and approved by the Secretary are eligible to become distributing agencies. (b) Private agencies. Where	Y	Y
2,007	§250.11 Eligibility determination for recipient agencies and recipients	Federal	Statute	(a) Verification of recipient agency eligibility. Distributing agencies at the request of FNS shall: (1) Verify that recipient agencies registered to participate in the National Commodity Processing (NCP) Program have a current agreement with the distrib	Y	Y
2,008	§250.12 Agreements	Federal	Statute	(a) Agreements with Department. Prior to the beginning of a distribution program, distributing agencies shall enter into written agreements with the Department which shall incorporate the terms and conditions set forth in this part. When requested by the	Y	Y
2,009	§250.13 Distribution and control of donated foods	Federal	Statute	(a) Availability and use of donated foods—(1) General. (i) Donated foods shall be available only for distribution and use in accordance with the provisions of this part and, with respect to distribution to households on all or part of an Indian reservatio	N	N
2,010	§250.14 Warehousing, distribution and storage of donated foods	Federal	Statute	(a) Standards for Warehousing and Distribution Systems—(1) Use of cost efficient and effective facilities. Distributing agencies shall use the most cost effective and efficient system for providing warehousing and distribution services to recipient agenci	N	N
2,011	§250.15 Financial management	Federal	Statute	(a) Distribution charges. (1) Recipient agencies may be required to pay part or all of the direct costs for intrastate storage and distribution of donated food through distribution charges assessed by the distributing or subdistributing agency, except as	Y	Y
2,012	§250.16 Maintenance of records	Federal	Statute	(a) General requirements. (1) Accurate and complete records shall be maintained with respect to the receipt, distribution/use and inventory of donated foods including: (i) End products processed from donated foods and (ii) The determination made as to l	Y	Y

2,013	§250.17 Reports	Federal	Statute	(a) Inventory reports and receipt of donated foods. Distributing agencies shall complete and submit to the FNSRO semiannual reports regarding excessive inventories (as defined in §250.14(f)) of donated foods, utilizing form FNS-155, the Inventory Manageme	Y	Y
2,014	§250.18 Audits	Federal	Statute	(a) Right of inspection and audit. The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, may inspect and inventory donated foods in storage or the facilities used in the handling or storage of such d	N	N
2,015	§250.19 Reviews	Federal	Statute	(a) General. Each distributing agency shall establish a review system in order to assess the effectiveness of its food distribution program in meeting the requirements of these regulations. (b) Responsibilities of distributing agencies. (1) As part of it	N	N
2,016	§250.20 Sanctions	Federal	Statute	Any distributing agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection with it or any agreements entered into pursuant to it, may, at the discretion of the Department, be disqualified fro	Y	Y
2,017	§250.21 Civil rights	Federal	Statute	Distributing agencies, subdistributing agencies and recipient agencies shall comply with the Department's nondiscrimination regulations (7 CFR parts 15, 15a, and 15b) and the FNS civil rights instructions to ensure that in the operation of the program no	N	N
2,018	§250.22 Complaints	Federal	Statute	Distributing agencies shall investigate promptly complaints received in connection with the distribution or use of donated foods. Irregularities which are disclosed shall be corrected immediately. Serious irregularities shall be promptly reported to the D	N	N
2,019	§250.23 Buy American	Federal	Statute	(a) Purchase requirements. When purchasing food products with Federal funds, whenever possible, recipient agencies shall purchase only food products that are produced in the United States (U.S.). Food products produced in the U.S. means: (1) An unmanufac	N	N
2,020	§250.24 Distributing agency performance standards	Federal	Statute	This section establishes basic performance standards which must be followed by distributing agencies responsible for intrastate distribution of donated commodities and products. The seven standards address the level of service that shall be provided to re	N	N
2,021	Subpart C—Processing and Labeling of Donated Foods §250.30 State processing of donated foods	Federal	Statute	(a) General. This section sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for the processing of donated foods and prescribes the minimum requirements to be inc	N	N

2,022	Subpart C—Processing and Labeling of Donated Foods §250.30 State processing of donated foods continued	Federal	Statute	(d) End products sold by processors. (1) When recipient agencies pay the processor for end products, such sales shall be under: (i) A refund system as defined in §250.3 and in accordance with paragraph (k) of this section; or (ii) A discount system whic	N	N
2,023	Subpart C—Processing and Labeling of Donated Foods §250.30 State processing of donated foods continued	Federal	Statute	(viii) In instances in which sales verification has been delegated to the processor pursuant to §250.19(b)(2), sales verification findings shall be reported as an attachment to the December and June performance reports in whatever format the State distrib	N	N
2,024	Subpart D—Donated Foods in Contracts With Food Service Management Companies §250.50 Contract requirements and procurement	Federal	Statute	(a) Contract requirements. Prior to donated foods being made available to a food service management company, the recipient agency must enter into a contract with the food service management company. The contract must ensure that all donated foods received	N	N
2,025	§250.51 Crediting for, and use of, donated foods	Federal	Statute	(a) Crediting for donated foods. In both fixed-price and cost-reimbursable contracts, the food service management company must credit the recipient agency for the value of all donated foods received for use in the recipient agency's meal service in a scho	N	N
2,026	§250.52 Storage and inventory management of donated foods	Federal	Statute	(a) General requirements. The food service management company must meet the general requirements in §250.14(b) for the storage and inventory management of donated foods. (b) Storage and inventory with commercially purchased foods. The food service manage	N	N
2,027	§250.53 Contract provisions	Federal	Statute	(a) Required contract provisions in fixed-price contracts. The following provisions relating to the use of donated foods must be included, as applicable, in a recipient agency's fixed-price contract with a food service management company. Such provisions	N	N
2,028	§250.54 Recordkeeping and reviews	Federal	Statute	(a) Recordkeeping requirements for the recipient agency. The recipient agency must maintain the following records relating to the use of donated foods in its contract with the food service management company: (1) The donated foods and processed end produ	Y	Y
2,029	Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs §250.56 Provision of donated foods in NSLP	Federal	Statute	(a) Distribution of donated foods in NSLP. The Department provides donated foods in NSLP to distributing agencies. Distributing agencies provide donated foods to school food authorities that participate in NSLP for use in serving nutritious lunches or oth	Y	Y

2,030	§250.57 Commodity schools	Federal	Statute	(a) Categorization of commodity schools. Commodity schools are schools that operate a nonprofit school food service in accordance with 7 CFR part 210, but receive additional donated food assistance rather than the general cash payment available to them un	N	N
2,031	§250.58 Ordering donated foods and their provision to school food authorities	Federal	Statute	(a) Ordering and distribution of donated foods. The distributing agency orders donated foods through a Web-based system called the Electronic Commodity Ordering System (ECOS). Through ECOS, the distributing agency places orders directly into a centralized	N	N
2,032	§250.59 Storage and inventory management of donated foods	Federal	Statute	(a) General requirements. Distributing agencies, subdistributing agencies, and school food authorities must meet the requirements for storage and inventory of donated foods in §250.14, in addition to the requirements in this section. (b) Storage at distr	Y	Y
2,033	§250.60 Use of donated foods in the school food service	Federal	Statute	(a) Use of donated foods in school lunches and other meals or activities. The school food authority should use donated foods, as far as practical, in the lunches served to schoolchildren, for which they receive an established per-meal value of donated foo	N	N
2,034	§250.61 Child and Adult Care Food Program (CACFP).	Federal	Statute	(a) Distribution of donated foods in CACFP. The Department provides donated foods in CACFP to distributing agencies, which provide them to child care and adult care institutions participating in CACFP for use in serving nutritious lunches and suppers to e	N	N
2,035	§250.62 Summer Food Service Program (SFSP).	Federal	Statute	(a) Distribution of donated foods in SFSP. The Department provides donated foods in SFSP to distributing agencies, which provide them to eligible service institutions participating in SFSP for use in serving nutritious meals to needy children primarily in	Y	Y
2,036	Subpart F—Household Programs §250.63 Commodity Supplemental Food Program	Federal	Statute	(a) Distribution. The distributing agency shall distribute donated foods to the State agency which is designated by the State to administer the Commodity Supplemental Food Program for that State and which has entered into a written agreement with the Depa	N	N
2,037	§250.64 Food Distribution Program in the Trust Territory of the Pacific Islands	Federal	Statute	(a) Distribution. The distributing agency shall make donated foods available for distribution to households in the Trust Territory of the Pacific Islands by those welfare agencies which certify households in accordance with a plan of operation approved by	N	N
2,038	§250.65 Food Distribution Program on Indian reservations	Federal	Statute	(a) Distribution. Distributing agencies which operate a food distribution program on Indian reservations shall comply with the provisions set forth in §§250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), §250.14,	N	N
2,039	§250.66 Special Supplemental Nutrition Program for Women, Infants and Children	Federal	Statute	(a) Distribution. At the request of the State agency responsible for administering the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) under part 246 of this chapter and with approval of the Department, donated foods m	Y	Y

2,040	Subpart G—Other Donated Food Outlets §250.67 Charitable institutions	Federal	Statute	(a) Distribution to charitable institutions. The Department provides donated foods to distributing agencies for distribution to charitable institutions, as defined in this part. A charitable institution must have a signed agreement with the distributing a	N	N
2,041	§250.68 Nutrition Services Incentive Program (NSIP)	Federal	Statute	(a) Distribution of donated foods in NSIP. The Department provides donated foods in NSIP to State Agencies on Aging and their selected elderly nutrition projects, for use in providing meals to elderly persons. NSIP is administered at the Federal level by	N	N
2,042	§250.69 Disaster food assistance	Federal	Statute	(a) Organizational eligibility. In instances in which the President has declared a disaster and FNS has determined that, as a result of the disaster, low-income households are unable to purchase adequate amounts of nutritious food, disaster organizations	N	N
2,043	§250.70 Food assistance in situations of distress	Federal	Statute	(a) Organizational eligibility. In situations of distress in which needs for food assistance cannot be met under other provisions of this Part, organizations (including agencies of State and Federal government) may be eligible to receive donated foods for	N	N

Title V, Part B, Subpart I of ESEA

Item	Law Number	Jurisdiction	Type of Law	Statuary Requirement and/or Authority Granted	Does this law specify who (customer) the agency must or may serve? (Y/N)	Does the law specify a deliverable (product or service) the agency must or may provide? (Y/N)
2,044	Subpart 1 — Charter School Programs SEC. 5201. PURPOSE	Federal	Statute	It is the purpose of this subpart to increase national understanding of the charter schools model by — (1) providing financial assistance for the planning, program design, and initial implementation of charter schools; (2) evaluating the effects of suc	N	N
2,045	SEC. 5202. PROGRAM AUTHORIZED	Federal	Statute	(a) IN GENERAL- The Secretary may award grants to State educational agencies having applications approved pursuant to section 5203 to enable such agencies to conduct a charter school grant program in accordance with this subpart. (b) SPECIAL RULE- If a S	Y	Y
2,046	SEC. 5203. APPLICATIONS	Federal	Statute	(a) APPLICATIONS FROM STATE AGENCIES- Each State educational agency desiring a grant from the Secretary under this subpart shall submit to the Secretary an application at such time, in such manner, and containing or accompanied by such information as the	Y	Y
2,047	SEC. 5204. ADMINISTRATION	Federal	Statute	(a) SELECTION CRITERIA FOR STATE EDUCATIONAL AGENCIES- The Secretary shall award grants to State educational agencies under this subpart on the basis of the quality of the applications submitted under section 5203(b), after taking into consideration such	Y	Y
2,048	SEC. 5205. NATIONAL ACTIVITIES	Federal	Statute	(a) IN GENERAL- The Secretary shall reserve for each fiscal year the greater of 5 percent or $5,000,000 of the amount appropriated to carry out this subpart, except that in no fiscal year shall the total amount so reserved exceed $8,000,000, to carry out	N	N
2,049	SEC. 5206. FEDERAL FORMULA ALLOCATION DURING FIRST YEAR AND FOR SUCCESSIVE ENROLLMENT EXPANSIONS.	Federal	Statute	(a) IN GENERAL- For purposes of the allocation to schools by the States or their agencies of funds under part A of title I, and any other Federal funds which the Secretary allocates to States on a formula basis, the Secretary and each State educational ag	Y	Y
2,050	SEC. 5207. SOLICITATION OF INPUT FROM CHARTER SCHOOL OPERATORS	Federal	Statute	To the extent practicable, the Secretary shall ensure that administrators, teachers, and other individuals directly involved in the operation of charter schools are consulted in the development of any rules or regulations required to implement this subpar	Y	Y
2,051	SEC. 5208. RECORDS TRANSFER	Federal	Statute	State educational agencies and local educational agencies, to the extent practicable, shall ensure that a student's records and, if applicable, a student's individualized education program as defined in section 602(11) of the Individuals with Disabilities	Y	Y
2,052	SEC. 5209. PAPERWORK REDUCTION	Federal	Statute	To the extent practicable, the Secretary and each authorized public chartering agency shall ensure that implementation of this subpart results in a minimum of paperwork for any eligible applicant or charter school.	Y	Y

2,053	SEC. 5210. DEFINITIONS	Federal	Statute	In this subpart: (1) CHARTER SCHOOL- The term charter school' means a public school that — (A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the	N	N
2,054	SEC. 5211. AUTHORIZATION OF APPROPRIATIONS	Federal	Statute	(a) IN GENERAL- There are authorized to be appropriated to carry out this subpart $300,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years. (b) RESERVATION- From the amount appropriated under subsectio	N	N

Title 34: Education PART 462—MEASURING EDUCATIONAL GAIN IN THE NATIONAL REPORTING SYSTEM FOR ADULT EDUCATION

Item	Law Number	Jurisdiction	Type of Law	Statuary Requirement and/or Authority Granted	Does this law specify who (customer) the agency must or may serve? (Y/N)	Does the law specify a deliverable (product or service) the agency must or may provide? (Y/N)
2,055	Subpart A—General §462.1 What is the scope of this part?	Federal	Statute	The regulations in this part establish the— (a) Procedures the Secretary uses to determine the suitability of standardized tests for use in the National Reporting System for Adult Education (NRS) to measure educational gain of participants in an adult education program required to report under the NRS; and (b) Procedures States and local eligible providers must follow when measuring educational gain for use in the NRS. (Authority: 20 U.S.C. 9212)	N	N
2,056	§462.2 What regulations apply?	Federal	Statute	The following regulations apply to this part: (a) The Education Department General Administrative Regulations (EDGAR) as follows: (1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations). (2) 34 CFR part 76 (State-Administered Programs). (3) 34 CFR part 77 (Definitions that Apply to Department Regulations). (4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities). (5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments). (6) 34 CFR part 81 (General Education Provisions Act—Enforcement). (7) 34 CFR part 82 (New Restrictions on Lobbying). (8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).	N	N

2,057	§462.3 What definitions apply?	Federal	Statute	(a) Definitions in the Adult Education and Family Literacy Act (Act). The following terms used in these regulations are defined in section 203 of the Adult Education and Family Literacy Act, 20 U.S.C. 9202 (Act): Adult education, Eligible provider, Individual of limited English proficiency, Individual with a disability, Literacy. (b) Other definitions. The following definitions also apply to this part: Adult basic education (ABE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ABE literacy level listed in the NRS educational functioning level table in §462.44. Adult education population means individuals— (1) Who are 16 years of age or older; (2) Who are not enrolled or required to be enrolled in secondary school	N	N
2,058	§462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?	Federal	Statute	A State or a local eligible provider may continue to measure educational gain for the NRS using a test that was identified in the Guidelines until the Secretary announces through a notice published in the Federal Register a deadline by which States and local eligible providers must use only tests that the Secretary has reviewed and determined to be suitable for use in the NRS under this part. (Approved by the Office of Management and Budget under control number 1830-0027) (Authority: 20 U.S.C. 9212)	Y	Y

2,059	Subpart B—What Process Does the Secretary Use To Review the Suitability of Tests for Use in the NRS?§462.10 How does the Secretary review tests?	Federal	Statute	(a) The Secretary only reviews tests under this part that are submitted by a test publisher. (b) A test publisher that wishes to have the suitability of its test determined by the Secretary under this part must submit an application to the Secretary, in the manner the Secretary may prescribe, by April 14, 2008, and, thereafter, by October 1 of each year. (Authority: 20 U.S.C. 9212)	N	N
2,060	§462.11 What must an application contain?	Federal	Statute	(a) Application content and format. In order for the Secretary to determine whether a standardized test is suitable for measuring the gains of participants in an adult education program required to report under the NRS, a test publisher must— (1) Include with its application information listed in paragraphs (b) through (i) of this section, and, if applicable, the information listed in paragraph (j) of this section; (2) Provide evidence that it holds a registered copyright of a test or is licensed by the copyright holder to sell or distribute a test. (3)(i) Arrange the information in its application in the order it is presented in paragraphs (b) through (j) of this section; or (ii) Include a table of contents in its application that identifies the location of the information required in paragraphs (b) through (j) of this section. (4) Submit to the Secretary three copies of its application. (b) General information. (1) A statement, in the technical manual for the test, of the intended purpose of the test and how the test will allow examinees to demonstrate the skills that are associated with the NRS educational functioning levels in §462.44.	Y	Y

2,061	§462.12 What procedures does the Secretary use to review the suitability of tests?	Federal	Statute	(a) Review. (1) When the Secretary receives a complete application from a test publisher, the Secretary selects experts in the field of educational testing and assessment who possess appropriate advanced degrees and experience in test development or psychometric research, or both, to advise the Secretary on the extent to which a test meets the criteria and requirements in §462.13. (2) The Secretary reviews and determines the suitability of a test only if an application— (i) Is submitted by a test publisher; (ii) Meets the deadline established by the Secretary; (iii) Includes a test that— (A) Has two or more secure, parallel, equated forms of the same test—either traditional paper and pencil or computer-administered instruments—for which forms are constructed prior to administration to examinees; or (B) Is an adaptive test that uses computerized algorithms for selecting and administering items in real time; however, for such an instrument, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing;	N	N

2,062	§462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?	Federal	Statute	In order for the Secretary to consider a test suitable for use in the NRS, the test or the test publisher, if applicable, must meet the following criteria and requirements: (a) The test must measure the NRS educational functioning levels of members of the adult education population. (b) The test must sample one or more of the major content domains of the NRS educational functioning levels of ABE, ESL, or ASE with sufficient numbers of questions to adequately represent the domain or domains. (c)(1) The test must meet all applicable and feasible standards for test construction and validity provided in the 1999 edition of the Standards for Educational and Psychological Testing, prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Psychological Association, Inc., 750 First Street, NE., Washington, DC 20002. You may inspect a copy at the Department of Education, room 11159, 550 12th Street, SW., Washington, DC 20202 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to:	N	N
2,063	§462.14 How often and under what circumstances must a test be reviewed by the Secretary?	Federal	Statute	(a) The Secretary's determination that a test is suitable for use in the NRS is in effect for a period of seven years from the date of the Secretary's written notification to the test publisher, unless otherwise indicated by the Secretary. After that time, if the test publisher wants the test to be used in the NRS, the test must be reviewed again by the Secretary so that the Secretary can determine whether the test continues to be suitable for use in the NRS. (b) If a test that the Secretary has determined is suitable for use in the NRS is substantially revised—for example, by changing its structure, number of items, content specifications, item types, or sub-tests—and the test publisher wants the test to continue to be used in the NRS, the test publisher must submit, as provided in §462.11(j)(4), the substantially revised test or version of the test to the Secretary for review so that the Secretary can determine whether the test continues to be suitable for use in the NRS. (Authority: 20 U.S.C. 9212)	N	Y

2,064	Subpart C [Reserved] Subpart D—What Requirements Must States and Local Eligible Providers Follow When Measuring Educational Gain? §462.40 Must a State have an assessment policy?	Federal	Statute	(a) A State must have a written assessment policy that its local eligible providers must follow in measuring educational gain and reporting data in the NRS. (b) A State must submit its assessment policy to the Secretary for review and approval at the time it submits its annual statistical report for the NRS. (c) The State's assessment policy must— (1) Include a statement requiring that local eligible providers measure the educational gain of all students who receive 12 hours or more of instruction in the State's adult education program with a test that the Secretary has determined is suitable for use in the NRS; (2) Identify the pre- and post-tests that the State requires local eligible providers to use to measure the educational gain of ABE, ESL, and ASE students; (3)(i) Indicate when, in calendar days or instructional hours, local eligible providers must administer pre- and post-tests to students; and (ii) Ensure that the time for administering the post-test is long enough after the pre-test to allow the test to measure educational gains according to the test publisher's guidelines;	Y	Y

2,065	§462.41 How must tests be administered in order to accurately measure educational gain?	Federal	Statute	(a) General. A local eligible provider must measure the educational gains of students using only tests that the Secretary has determined are suitable for use in the NRS and that the State has identified in its assessment policy. (b) Pre-test. A local eligible provider must— (1) Administer a pre-test to measure a student's educational functioning level at intake, or as soon as possible thereafter; (2) Administer the pre-test to students at a uniform time, according to its State's assessment policy; and (3) Administer pre-tests to students in the skill areas identified in its State's assessment policy. (c) Post-test. A local eligible provider must— (1) Administer a post-test to measure a student's educational functioning level after a set time period or number of instructional hours; (2) Administer the post-test to students at a uniform time, according to its State's assessment policy; (3)(i) Administer post-tests with a secure, parallel, equated form of the same test—either traditional paper and pencil or computer-administered	Y	Y

2,066	§462.42 How are tests used to place students at an NRS educational functioning level?	Federal	Statute	(a) A local eligible provider must use the results of the pre-test described in §462.41(b) to initially place students at the appropriate NRS educational functioning level. (b) A local eligible provider must use the results of the post-test described in §462.41(c)— (1) To determine whether students have completed one or more educational functioning levels or are progressing within the same level; and (2) To place students at the appropriate NRS educational functioning level. (c)(1) States and local eligible providers are not required to use all of the skill areas described in the NRS educational functioning levels to place students. (2) States and local eligible providers must test and report on the skill areas most relevant to the students' needs and to the programs' curriculum. (d)(1) If a State's assessment policy requires a local eligible provider to test a student in multiple skill areas and the student will receive instruction in all of the skill areas, the local eligible provider must place the student in an educational functioning level that is equivalent to the student's lowest test score for any of the skill areas tested under §462.41(b) and (c). (2) If a State's assessment policy requires a local eligible provider to test a	N	N

2,067	§462.43 How is educational gain measured?	Federal	Statute	(a)(1) Educational gain is measured by comparing the student's initial educational functioning level, as measured by the pre-test described in §462.41(b), with the student's educational functioning level as measured by the post-test described in §462.41(c). Example: A State's assessment policy requires its local eligible providers to test students in reading and numeracy. The student scores lower in reading than in numeracy. As described in §462.42(d)(1), the local eligible provider would use the student's reading score to place the student in an educational functioning level. To measure educational gain, the local eligible provider would compare the reading score on the pre-test with the reading score on the post-test. (2) A student is considered to have made an educational gain when the student's post-test indicates that the student has completed one or more educational functioning levels above the level in which the student was placed by the pre-test. (b) If a student is not post-tested, then no educational gain can be measured for that student and the local eligible provider must report the student in the same educational functioning level as initially placed for NRS reporting purposes. (Approved by the Office of Management and Budget under control number 1830-0027)	Y	Y

2,068	§462.44 Which educational functioning levels must States and local eligible providers use to measure and report educational gain in the NRS?	Federal	Statute	States and local eligible providers must use the NRS educational functioning levels in the following functioning level table: eCFR graphic er14ja08.000.gif View or download PDF eCFR graphic er14ja08.001.gif View or download PDF eCFR graphic er14ja08.002.gif View or download PDF eCFR graphic er14ja08.003.gif View or download PDF (Approved by the Office of Management and Budget under control number 1830-0027)	N	N
2,069	Title 34: Education PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964	Federal	Statute			

2,070	§100.1 Purpose	Federal	Statute	The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Education.	N	N
2,071	§100.2 Application of this regulation	Federal	Statute	This regulation applies to any program to which Federal financial assistance is authorized to be extended to a recipient under a law administered by the Department, including the Federal financial assistance listed in appendix A of this regulation. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this regulation, (c) the use of any assistance by any individual who is the ultimate beneficiary, or (d) any employment practice, or any employer, employment agency, or labor organization, except to the extent described in §100.3. The fact that a type of Federal assistance is not listed in appendix A shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the Federal Register. (Authority: Secs. 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253; 42 U.S.C. 2000d-1, 2000d-3)	N	N

2,072	§100.3 Discrimination prohibited	Federal	Statute	(a) General. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies. (b) Specific discriminatory actions prohibited. (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin: (i) Deny an individual any service, financial aid, or other benefit provided under the program; (ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; (iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program; (iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program; (v) Treat an individual differently from others in determining whether he	N	N

2,073	§100.4 Assurances required	Federal	Statute	(a) General. (1) Every application for Federal financial assistance to which this part applies, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement. (2) Where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government the	N	N

2,074	§100.5 Illustrative application	Federal	Statute	The following examples will illustrate the programs aided by Federal financial assistance of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by title VI of the Act and this regulation, as a condition of the receipt of Federal financial assistance). (a) In federally-affected area assistance (Pub. L. 815 and Pub. L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient. (b) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university. (c) In a training grant to a hospital or other nonacademic institution,	N	N

2,075	§100.6 Compliance information	Federal	Statute	(a) Cooperation and assistance. The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part. (b) Compliance reports. Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. (c) Access to sources of information. Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this	Y	Y

2,076	§100.7 Conduct of investigations	Federal	Statute	(a) Periodic compliance reviews. The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part. (b) Complaints. Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee. (c) Investigations. The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part. (d) Resolution of matters. (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action	N	N

2,077	§100.8 Procedure for effecting compliance	Federal	Statute	(a) General. If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law. (b) Noncompliance with §100.4. If an applicant fails or refuses to furnish an assurance required under §100.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part. (c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating or refusing to grant or	N	N

2,078	§100.9 Hearings	Federal	Statute	(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by §100.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and §100.8(c) of this regulation and consent to the making of a decision on the basis of such information as may be filed as the record. (b) Time and place of hearing. Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing examiner designated in	N	N

2,079	§100.10 Decisions and notices	Federal	Statute	(a) Decisions by hearing examiners. After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the responsible Department official, file with the reviewing authority exceptions to the initial decision, with his reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section. (b) Decisions on record or review by the reviewing authority. Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any. (c) Decisions on record where a hearing is waived. Whenever a hearing is	N	N
2,080	§100.11 Judicial review	Federal	Statute	Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act. (Authority: Sec. 603, 78 Stat. 253; 42 U.S.C. 2000d-2)	N	N

2,081	§100.12 Effect on other regulations; forms and instructions	Federal	Statute	(a) Effect on other regulations. All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground; or (2) Requirements for Emergency School Assistance as published in 35 FR 13442 and codified as 34 CFR part 280. (b) Forms and instructions. The responsible Department official shall issue	N	N

2,082	§100.13 Definitions	Federal	Statute	As used in this part: (a) The term Department means the Department of Education. (b) The term Secretary means the Secretary of Education. (c) The term responsible Department official means the Secretary or, to the extent of any delegation by the Secretary of authority to act in his stead under any one or more provisions of this part, any person or persons to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate such authority. (d) The term reviewing authority means the Secretary, or any person or persons (including a board or other body specially created for that purpose and also including the responsible Department official) acting pursuant to authority delegated by the Secretary to carry out responsibilities under §100.10(a)-(d). (e) The term United States means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term “State” means any one of the foregoing. (f) The term Federal financial assistance includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in	N	N

2,083	Appendix A to Part 100—Federal Financial Assistance to Which These Regulations Apply	Federal	Statute	Part 1—Assistance Other Than Continuing Assistance to States 1. Loans for acquisition of equipment for academic subjects, and for minor remodeling (20 U.S.C. 445). 2. Construction of facilities for institutions of higher education (20 U.S.C. 701-758). 3. School Construction in federally-affected and in major disaster areas (20 U.S.C. 631-647). 4. Construction of educational broadcast facilities (47 U.S.C. 390-399). 5. Loan service of captioned films and educational media; research on, and production and distribution of, educational media for the handicapped, and training of persons in the use of such media for the handicapped (20 U.S.C. 1452). 6. Demonstration residential vocational education schools (20 U.S.C. 1321). 7. Research and related activities in education of handicapped children (20 U.S.C. 1441). 8. Educational research, dissemination and demonstration projects; research training; and construction under the Cooperation Research Act (20 U.S.C. 331-332(b)).	N	N

2,084	Appendix B to Part 100—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs	Federal	Statute	I. Scope and Coverage A. Application of Guidelines These Guidelines apply to recipients of any Federal financial assistance from the Department of Education that offer or administer programs of vocational education or training. This includes State agency recipients. B. Definition of Recipient The definition of recipient of Federal financial assistance is established by Department regulations implementing Title VI, Title IX, and Section 504 (34 CFR 100.13(i), 106.2(h), 104.3(f). For the purposes of Title VI: The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such terms does not include any ultimate beneficiary [e.g., students] under any such program. (34 CFR 100.13(i)). For the purposes of Title IX: Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or	N	N

2,085	Appendix B to Part 100—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs continued...	Federal	Statute	B. Distribution of Funds Recipients may not adopt a formula or other method for the allocation of Federal, State, or local vocational education funds that has the effect of discriminating on the basis of race, color, national origin, sex, or handicap. However, a recipient may adopt a formula or other method of allocation that uses as a factor race, color, national origin, sex, or handicap [or an index or proxy for race, color, national origin, sex, or handicap e.g., number of persons receiving Aid to Families with Dependent Children or with limited English speaking ability] if the factor is included to compensate for past discrimination or to comply with those provisions of the Vocational Education Amendments of 1976 designed to assist specified protected groups. C. Example of a Pattern Suggesting Unlawful Discrimination In each State it is likely that some local recipients will enroll greater proportions of minority students in vocational education than the State-wide proportion of minority students in vocational education. A funding formula or other method of allocation that results in such local recipients receiving per-pupil allocations of Federal or State vocational education funds lower than the State-wide average per-pupil allocation will be presumed unlawfully discriminatory. D. Distribution Through Competitive Grants or Contracts Each State agency that establishes criteria for awarding competitive vocational education grants or contracts must establish and apply the	N	N

2,086	Appendix B to Part 100—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs continued...	Federal	Statute	F. Eligibility for Admission to Secondary Vocational Education Centers Based on Numerical Limits Imposed on Sending Schools A recipient may not adopt or maintain a system for admission to a secondary vocational education center or program that limits admission to a fixed number of students from each sending school included in the center's service area if such a system disproportionately excludes students from the center on the basis of race, sex, national origin or handicap. (Example: Assume 25 percent of a school district's high school students are black and that most of those black students are enrolled in one high school; the white students, 75 percent of the district's total enrollment, are generally enrolled in the five remaining high schools. This paragraph prohibits a system of admission to the secondary vocational education center that limits eligibility to a fixed and equal number of students from each of the district's six high schools.) G. Remedies for Violation of Eligibility Based on Numerical Limits Requirements If the Office for Civil Rights finds a violation of paragraph F, above, the recipient must implement an alternative system of admissions that does not disproportionately exclude students on the basis of race, color, national origin, sex, or handicap. H. Eligibility for Admission to Vocational Education Centers, Branches or Annexes Based Upon Student Option A vocational education center, branch or annex, open to all students in a	Y	Y

2,087	Appendix B to Part 100—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs continued...	Federal	Statute	B. Counseling and Prospects for Success Recipients that operate vocational education programs must insure that counselors do not direct or urge any student to enroll in a particular career or program, or measure or predict a student's prospects for success in any career or program based upon the student's race, color, national origin, sex, or handicap. Recipients may not counsel handicapped students toward more restrictive career objectives than nonhandicapped students with similar abilities and interests. If a vocational program disproportionately enrolls male or female students, minority or nonminority students, or handicapped students, recipients must take steps to insure that the disproportion does not result from unlawful discrimination in counseling activities. C. Student Recruitment Activities Recipients must conduct their student recruitment activities so as not to exclude or limit opportunities on the basis of race, color, national origin, sex, or handicap. Where recruitment activities involve the presentation or portrayal of vocational and career opportunities, the curricula and programs described should cover a broad range of occupational opportunities and not be limited on the basis of the race, color, national origin, sex, or handicap of the students or potential students to whom the presentation is made. Also, to the extent possible, recruiting teams should include persons of different races, national origins, sexes, and handicaps. D. Counseling of Students With Limited English-Speaking Ability or Hearing	Y	Y
2,088	Title 34: Education PART 101—PRACTICE AND PROCEDURE FOR HEARINGS UNDER PART 100 OF THIS TITLE	Federal	Statute			
2,089	Subpart A—General Information §101.1 Scope of rules	Federal	Statute	The rules of procedure in this part supplement §§100.9 and 100.10 of this subtitle and govern the practice for hearings, decisions, and administrative review conducted by the Department of Education, pursuant to Title VI of the Civil Rights Act of 1964 (section 602, 78 Stat. 252) and part 100 of this subtitle.	N	N
2,090	§101.2 Records to be public	Federal	Statute	All pleadings, correspondence, exhibits, transcripts, of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights hearing clerk. Inquiries may be made at the Department of Education, 400 Maryland Avenue SW., Washington, DC 20202.	N	N

2,091	§101.3 Use of gender and number	Federal	Statute	As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.	N	N
2,092	§101.4 Suspension of rules	Federal	Statute	Upon notice to all parties, the reviewing authority or the presiding officer, with respect to matters pending before them, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.	N	N
2,093	Subpart B—Appearance and Practice §101.11 Appearance	Federal	Statute	A party may appear in person or by counsel and participate fully in any proceeding. A State agency or a corporation may appear by any of its officers or by any employee it authorizes to appear on its behalf. Counsel must be members in good standing of the bar of a State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.	N	N
2,094	§101.12 Authority for representation	Federal	Statute	Any individual acting in a representative capacity in any proceeding may be required to show his authority to act in such capacity.	N	N
2,095	§101.13 Exclusion from hearing for misconduct	Federal	Statute	Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.	N	N
2,096	Subpart C—Parties §101.21 Parties	Federal	Statute	(a) The term party shall include an applicant or recipient or other person to whom a notice of hearing or opportunity for hearing has been mailed naming him a respondent. (b) The Assistant Secretary for Civil Rights of the Department of Education, shall be deemed a party to all proceedings.	N	N

2,097	§101.22 Amici curiae	Federal	Statute	(a) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and may contribute materially to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing. (b) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to be made or a prior decision is subject to review. His brief shall be filed and served on each party within the time limits applicable to the party whose position he deems himself to support; or if he does not deem himself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings. (c) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The presiding officer, in his discretion, may grant any such request if he believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.	N	N
2,098	§101.23 Complainants not parties	Federal	Statute	A person submitting a complaint pursuant to §100.7(b) of this title is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an amicus curiae.	N	N
2,099	Subpart D—Form, Execution, Service and Filing of Documents §101.31 Form of documents to be filed	Federal	Statute	Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 81⁄2 inches wide and 12 inches long.	N	N
2,100	§101.32 Signature of documents	Federal	Statute	The signature of a party, authorized officer, employee or attorney constitutes a certificate that he has read the document, that to the best of his knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.	N	N

2,101	§101.33 Filing and service	Federal	Statute	All notices by a Department official, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to a Department official from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 9 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time. Originals only on exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see §101.107.	N	N
2,102	§101.34 Service—how made	Federal	Statute	Service shall be made by personal delivery of one copy to each person to be served or by mailing by first-class mail, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed, and should be air mailed if the addressee is more than 300 miles distant.	N	N
2,103	§101.35 Date of service	Federal	Statute	The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.	N	N
2,104	§101.36 Certificate of service	Federal	Statute	The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.	N	N
2,105	Subpart E—Time §101.41 Computation	Federal	Statute	In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.	N	N

2,106	§101.42 Extension of time or postponement	Federal	Statute	Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of his decision such requests should be addressed to him. Answers to such requests are permitted, if made promptly.	N	N
2,107	§101.43 Reduction of time to file documents	Federal	Statute	For good cause, the reviewing authority or the presiding officer, with respect to matters pending before them, may reduce any time limit prescribed by the rules in this part, except as provided by law or in part 100 of this chapter. [45 FR 30931, May 9, 1980, as amended at 79 FR 76095, Dec. 19, 2014]	N	N
2,108	Subpart F—Proceedings Prior to Hearing §101.51 Notice of hearing or opportunity for hearing	Federal	Statute	Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to §100.9 of this title.	N	N
2,109	§101.52 Answer to notice	Federal	Statute	The respondent, applicant or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case his answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.	N	N

2,110	§101.53 Amendment of notice or answer	Federal	Statute	The Assistant Secretary for Civil Rights may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Otherwise a notice or answer may be amended only by leave of the presiding officer. A respondent shall file his answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the presiding officer otherwise orders.	N	N
2,111	§101.54 Request for hearing	Federal	Statute	Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing the respondent, either in his answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of the right to a hearing and to constitute his consent to the making of a decision on the basis of such information as is available.	N	N
2,112	§101.55 Consolidation	Federal	Statute	The responsible Department official may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.	N	N
2,113	§101.56 Motions	Federal	Statute	Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer, if the case is pending before him. A repetitious motion will not be entertained.	N	N
2,114	§101.57 Responses to motions and petitions	Federal	Statute	Within 8 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.	N	N

2,115	§101.58 Disposition of motions and petitions	Federal	Statute	The reviewing authority or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: Provided, however, That prehearing conferences, hearings and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held or written motions or petitions unless the presiding officer in his discretion expressly so orders.	N	N
2,116	Subpart G—Responsibilities and Duties of Presiding Officer §101.61 Who presides	Federal	Statute	A hearing examiner assigned under 5 U.S.C. 3105 or 3344 (formerly section 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules of procedure apply.	N	N
2,117	§101.62 Designation of hearing examiner	Federal	Statute	The designation of the hearing examiner as presiding officer shall be in writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record including his recommended findings and proposed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of such order shall be served on all parties. After service of an order designating a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.	N	N

2,118	§101.63 Authority of presiding officer	Federal	Statute	The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to: (a) Arrange and issue notice of the date, time, and place of hearings, or, upon due notice to the parties, to change the date, time, and place of hearings previously set. (b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding. (c) Require parties and amici curiae to state their position with respect to the various issues in the proceeding. (d) Administer oaths and affirmations. (e) Rule on motions, and other procedural items on matters pending before him. (f) Regulate the course of the hearing and conduct of counsel therein. (g) Examine witnesses and direct witnesses to testify. (h) Receive, rule on, exclude or limit evidence.	N	N
2,119	Subpart H—Hearing Procedures §101.71 Statement of position and trial briefs	Federal	Statute	The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing. The presiding officer may also require the parties to submit trial briefs.	N	N

2,120	§101.72 Evidentiary purpose	Federal	Statute	(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings. (b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of part 100 of this title. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from his failure timely to answer, or from his admissions or stipulations in the record, that there are no matters of material fact in dispute, the reviewing authority or presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under §101.101. Thereafter the proceedings shall go to conclusion in accordance with subpart J of this part. The presiding officer may allow an appeal from such order in accordance with §101.86.	N	N
2,121	§101.73 Testimony	Federal	Statute	Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in his discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing, and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§101.75 and 101.76, witnesses shall be available at the hearing for cross-examination.	N	N
2,122	§101.74 Exhibits	Federal	Statute	Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.	N	N

2,123	§101.75 Affidavits	Federal	Statute	An affidavit is; not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and not less than 7 days prior to hearing a party may file and serve written objection to any affidavit on the ground that he believes it necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.	N	N
2,124	§101.76 Depositions	Federal	Statute	Upon such terms as may be just, for the convenience of the parties or of the Department, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.	N	N
2,125	§101.77 Admissions as to facts and documents	Federal	Statute	Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the presiding officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the presiding officer or the reviewing authority if no presiding officer has yet been designated may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute and admission by him for any other purpose or be used against him in any other proceeding or action.	N	N
2,126	§101.78 Evidence	Federal	Statute	Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.	N	N
2,127	§101.79 Cross-examination	Federal	Statute	A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination.	N	N

2,128	§101.80 Unsponsored written material	Federal	Statute	Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.	N	N
2,129	§101.81 Objections	Federal	Statute	Objections to evidence shall be timely and briefly state the ground relied upon.	N	N
2,130	§101.82 Exceptions to rulings of presiding officer unnecessary	Federal	Statute	Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which he desires the presiding officer to take, or his objection to an action taken, and his grounds therefor.	N	N
2,131	§101.83 Official notice	Federal	Statute	Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.	N	N
2,132	§101.84 Public document items	Federal	Statute	Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.	N	N
2,133	§101.85 Offer of proof	Federal	Statute	An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.	N	N

2,134	§101.86 Appeals from ruling of presiding officer	Federal	Statute	Rulings of the presiding officer may not be appealed to the reviewing authority prior to his consideration of the entire proceeding except with the consent of the presiding officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the reviewing authority within such period as the presiding officer directs. No oral argument will be heard unless the reviewing authority directs otherwise. At any time prior to submission of the proceeding to it for decisions, the reviewing authority may direct the presiding officer to certify any question or the entire record to it for decision. Where the entire record is so certified, the presiding officer shall recommend a decision.	N	N
2,135	Subpart I—The Record §101.91 Official transcript	Federal	Statute	The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.	N	N
2,136	§101.92 Record for decision	Federal	Statute	The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.	N	N
2,137	Subpart J—Posthearing Procedures, Decisions §101.101 Posthearing briefs: proposed findings and conclusions	Federal	Statute	(a) The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs. (b) Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.	N	N

2,138	§101.102 Decisions following hearing	Federal	Statute	When the time for submission of posthearing briefs has expired, the presiding officer shall certify the entire record, including his recommended findings and proposed decision, to the responsible Department official; or if so authorized he shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.	N	N
2,139	§101.103 Exceptions to initial or recommended decisions	Federal	Statute	Within 20 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the reviewing authority. Any other party may file a response thereto within 30 days after the mailing of the decision. Upon the filing of such exceptions, the reviewing authority shall review the decision and issue its own decision thereon.	N	N
2,140	§101.104 Final decisions	Federal	Statute	(a) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 20-day period specified in §101.103, such decision shall become the final decision of the Department, and shall constitute “final agency action” within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of §101.106. (b) Where the hearing is conducted by a hearing examiner who makes a recommended decision, or upon the filing of exceptions to a hearing examiner's initial decision, the reviewing authority shall review the recommended or initial decision and shall issue its own decision thereon, which shall become the final decision of the Department, and shall constitute “final agency action” within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of §101.106. (c) All final decisions shall be promptly served on all parties, and amici, if any.	N	N

2,141	§101.105 Oral argument to the reviewing authority	Federal	Statute	(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, he shall make such request in writing. The reviewing authority may grant or deny such requests in its discretion. If granted, it will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Department hearing clerk not later than 7 days before the date set for oral argument. (b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted. (c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Department hearing clerk at least 7 days before the argument.	N	N
2,142	§101.106 Review by the Secretary	Federal	Statute	Within 20 days after an initial decision becomes a final decision pursuant to §101.104(a) or within 20 days of the mailing of a final decision referred to in §101.104(b), as the case may be, a party may request the Secretary to review the final decision. The Secretary may grant or deny such request, in whole or in part, or serve notice of his intent to review the decision in whole or in part upon his own motion. If the Secretary grants the requested review, or if he serves notice of intent to review upon his own motion, each party to the decision shall have 20 days following notice of the Secretary's proposed action within which to file exceptions to the decision and supporting briefs and memoranda, or briefs and memoranda in support of the decision. Failure of a party to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.	N	N
2,143	§101.107 Service on amici curiae	Federal	Statute	All briefs, exceptions, memoranda, requests, and decisions referred to in this subpart J shall be served upon amici curiae at the same times and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under §101.71 shall be served on amici.	N	N

2,144	Subpart K—Judicial Standards of Practice §101.111 Conduct	Federal	Statute	Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his best efforts to restrain his client from improprieties in connection with a proceeding.	N	N
2,145	§101.112 Improper conduct	Federal	Statute	With respect to any proceeding it is improper for any interested person to attempt to sway the judgement of the reviewing authority by undertaking to bring pressure or influence to bear upon any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper that such interested persons or any members of the Department's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgement of any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper for any person to solicit communications to any such officer, or his decisional staff, other than proper communications by parties or amici curiae.	N	N
2,146	§101.113 Ex parte communications	Federal	Statute	Only persons employed by or assigned to work with the reviewing authority who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the reviewing authority, or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The reviewing authority, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.	N	N
2,147	§101.114 Expeditious treatment	Federal	Statute	Requests for expeditious treatment of matters pending before the responsible Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.	N	N

2,148	§101.115 Matters not prohibited	Federal	Statute	A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by §101.113. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible Department official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of part 100 of this title are not prohibited.	N	N
2,149	§101.116 Filing of ex parte communications	Federal	Statute	A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he considers the memorandum to be incorrect.	N	N

2,150	Subpart L—Posttermination Proceedings §101.121 Posttermination proceedings	Federal	Statute	(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that since entry of the order, it has brought its program or activity into compliance with the requirements of the Act, and with the Regulation thereunder, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance. (b) In the event that a hearing shall be requested pursuant to paragraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.	N	N
2,151	Subpart M—Definitions §101.131 Definitions	Federal	Statute	The definitions contained in §100.13 of this subtitle apply to this part, unless the context otherwise requires, and the term “reviewing authority” as used herein includes the Secretary of Education, with respect to action by that official under §101.106. Transition provisions: (a) The amendments herein shall become effective upon publication in the Federal Register. (b) These rules shall apply to any proceeding or part thereof to which part 100 of this title applies. In the case of any proceeding or part thereof governed by the provisions of 34 CFR, part 100 (Title VI regulations of the Department of Education) as that part existed prior to the amendments published in the Federal Register on Oct. 19, 1967 (effective on that date), the rules in this part 101 shall apply as if those amendments were not in effect.	N	N

2,152	Title 34: Education PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE	Federal	Statute			
2,153	Subpart A—General Provisions §104.1 Purpose	Federal	Statute	The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.	N	N
2,154	§104.2 Application	Federal	Statute	This part applies to each recipient of Federal financial assistance from the Department of Education and to the program or activity that receives such assistance. [65 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]	N	N

2,155	§104.3 Definitions	Federal	Statute	As used in this part, the term: (a) The Act means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794. (b) Section 504 means section 504 of the Act. (c) Education of the Handicapped Act means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq. (d) Department means the Department of Education. (e) Assistant Secretary means the Assistant Secretary for Civil Rights of the Department of Education. (f) Recipient means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. (g) Applicant for assistance means one who submits an application, request,	N	N

2,156	§104.5 Assurances required	Federal	Statute	(a) Assurances. An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department. (b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. (2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property. (3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended. (c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during	N	N

2,157	§104.6 Remedial action, voluntary action, and self-evaluation	Federal	Statute	(a) Remedial action. (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination. (2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action. (3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred. (b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.	N	N
2,158	§104.7 Designation of responsible employee and adoption of grievance procedures	Federal	Statute	(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part. (b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.	N	N

2,159	§104.8 Notice	Federal	Statute	(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to §104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications. (b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications. [45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]	N	N
2,160	§104.9 Administrative requirements for small recipients	Federal	Statute	The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.	N	N
2,161	§104.10 Effect of state or local law or other requirements and effect of employment opportunities	Federal	Statute	(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession. (b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.	N	N

2,162	Subpart B—Employment Practices §104.11 Discrimination prohibited	Federal	Statute	(a) General. (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies. (2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs or activities assisted under that Act. (3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap. (4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships. (b) Specific activities. The provisions of this subpart apply to:	Y	Y

2,163	§104.12 Reasonable accommodation	Federal	Statute	(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity. (b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. (c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include: (1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget; (2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and (3) The nature and cost of the accommodation needed.	N	N
2,164	§104.13 Employment criteria	Federal	Statute	(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available. (b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).	N	N

2,165	§104.14 Preemployment inquiries	Federal	Statute	(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions. (b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, Provided, That: (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and (2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in	N	N
2,166	Subpart C—Accessibility §104.21 Discrimination prohibited	Federal	Statute	No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.	N	N

2,167	§104.22 Existing facilities	Federal	Statute	(a) Accessibility. A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons. (b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of §104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate. (c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the	Y	Y

2,168	§104.23 New construction	Federal	Statute	(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part. (b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons. (c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided. (2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require	Y	Y
2,169	Subpart D—Preschool, Elementary, and Secondary Education §104.31 Application of this subpart	Federal	Statute	Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]	N	N
2,170	§104.32 Location and notification	Federal	Statute	A recipient that operates a public elementary or secondary education program or activity shall annually: (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart. [45 FR 30936, May 9, 2000, as amended at 65 FR 68054, Nov. 13, 2000]	N	N

2,171	§104.33 Free appropriate public education	Federal	Statute	(a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. (b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§104.34, 104.35, and 104.36. (2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section. (3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred. (c) Free education—(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or	Y	Y

2,172	§104.34 Educational setting	Federal	Statute	(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home. (b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question. (c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.	N	N

2,173	§104.35 Evaluation and placement	Federal	Statute	(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is belived to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. (b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that: (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure,	Y	Y
2,174	§104.36 Procedural safeguards	Federal	Statute	A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement. [45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]	N	N

2,175	§104.37 Nonacademic services	Federal	Statute	(a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities. (2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment. (b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. (c) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or	Y	Y
2,176	§104.38 Preschool and adult education	Federal	Statute	A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits or services to be provided. [65 FR 68055, Nov. 13, 2000]	N	N

2,177	§104.39 Private education	Federal	Statute	(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in §104.33(b)(1), within that recipient's program or activity. (b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient. (c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of §§104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§104.34, 104.37, and 104.38. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]	N	N
2,178	Subpart E—Postsecondary Education §104.41 Application of this subpart	Federal	Statute	Subpart E applies to postsecondary education programs or activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]	N	N

2,179	§104.42 Admissions and recruitment	Federal	Statute	(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies. (b) Admissions. In administering its admission policies, a recipient to which this subpart applies: (1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted; (2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available. (3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions	N	N

2,180	§104.43 Treatment of students; general	Federal	Statute	(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies. (b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons. (c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity. (d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]	Y	Y

2,181	§104.44 Academic adjustments	Federal	Statute	(a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. (b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity. (c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's	Y	Y
2,182	§104.45 Housing	Federal	Statute	(a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students. (b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.	N	N

2,183	§104.46 Financial and employment assistance to students	Federal	Statute	(a) Provision of financial assistance. (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not, (i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap. (2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap. (b) Assistance in making available outside employment. A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.	N	N

2,184	§104.47 Nonacademic services	Federal	Statute	(a) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities. (2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of §104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different. (b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.	N	N
2,185	Subpart F—Health, Welfare, and Social Services §104.51 Application of this subpart	Federal	Statute	Subpart F applies to health, welfare, and other social service programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]	N	N

2,186	§104.52 Health, welfare, and other social services	Federal	Statute	(a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap: (1) Deny a qualified handicapped person these benefits or services; (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons; (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in §104.4(b)) as the benefits or services provided to others; (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others. (b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.	N	N
2,187	§104.53 Drug and alcohol addicts	Federal	Statute	A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.	N	N
2,188	§104.54 Education of institutionalized persons	Federal	Statute	A recipient to which this subpart applies and that operates or supervises a program or activity that provides aid, benefits or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in §104.3(k)(2), in its program or activity is provided an appropriate education, as defined in §104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]	N	N

2,189	Subpart G—Procedures §104.61 Procedures	Federal	Statute	The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§100.6-100.10 and part 101 of this title.	N	N
2,190	Appendix A to Part 104—Analysis of Final Regulation	Federal	Statute	Subpart A—General Provisions Definitions—1. Recipient. Section 104.23 contains definitions used throughout the regulation. One comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing title VI and title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of §104.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiaries of the recipients' programs. 2. Federal financial assistance. In §104.3(h), defining federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under section 503. The Department has never considered such contracts to be contracts of assistance; the explicit exemption has been added only to avoid possible confusion. The proposed regulation's exemption of contracts of insurance or guaranty	Y	Y

2,191	Appendix A to Part 104—Analysis of Final Regulation continued…	Federal	Statute	The Secretary wishes to reassure recipients that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by many commenters. It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified. With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider—for all applicants including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules	Y	Y

2,192	Appendix A to Part 104—Analysis of Final Regulation continued…	Federal	Statute	It is important that both handicapped persons and the public at large be aware of the obligations of recipients under section 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under section 504 and this regulation. In §104.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of section 504, without dictating the precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the Department. Section 104.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under section 504. The last sentence of §104.8(a) has been revised to list possible, rather than required, means of notification. Section 104.8(b) requires recipients to include a notification of their policy of nondiscrimination in recruitment and other general information materials. In response to a number of comments, §104.8 has been revised to delete the requirements of publication in local newspapers, which has proved to be both troublesome and ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of	Y	Y

2,193	Appendix A to Part 104—Analysis of Final Regulation continued…	Federal	Statute	17. Tests and selection criteria. Revised §104.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Assistant Secretary to be available. This paragraph is an application of the principle established under title VII of the Civil Rights Act of 1964 in Griggs v. Duke Power Company, 401 U.S. 424 (1971). Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of "disproportionate, adverse effect" difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, §104.13(a) has been revised to place the burden on the Assistant Secretary, rather than the recipient, to identify alternate tests. Section 104.13(b) requires that a recipient take into account that some tests	Y	Y

2,194	Appendix A to Part 104—Analysis of Final Regulation continued…	Federal	Statute	Subpart D—Preschool, Elementary, and Secondary Education Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term “adult education” refers only to those educational programs and activities for adults that are operated by elementary and secondary schools. The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, §§104.32 and 104.33 apply only to public programs and §104.39 applies only to private programs; §§104.35 and 104.36 apply both to public programs and to those private programs that include special services for handicapped students. Subpart B generally conforms to the standards established for the education of handicapped persons in Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972), Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 344 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and Lebanks v. Spears, 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Pub. L. 94-142 (the EHA). The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education,	Y	Y

2,195	Appendix A to Part 104—Analysis of Final Regulation continued…	Federal	Statute	The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the section 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, §104.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing the EHA allows reevaluation at three-year intervals except under certain specified circumstances. Under §104.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due process procedures of the EHA, incorporated by reference in the proposed section 504 regulation, are inappropriate for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model. 26. Nonacademic services. Section 104.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is	Y	Y

2,196	Appendix A to Part 104—Analysis of Final Regulation continued…	Federal	Statute	Subpart F—Health, Welfare, and Social Services Subpart F applies to recipients that operate health, welfare, and social service programs. The Department received fewer comments on this subpart than on others. Although many commented that subpart F lacked specificity, these commenters provided neither concrete suggestions nor additions. Nevertheless, some changes have been made, pursuant to comment, to clarify the obligations of recipients in specific areas. In addition, in an effort to reduce duplication in the regulation, the section governing recipients providing health services has been consolidated with the section regulating providers of welfare and social services. Since the separate provisions that appeared in the proposed regulation were almost identical, no substantive change should be inferred from their consolidation. Several commenters asked whether subpart F applies to vocational rehabilitation agencies whose purpose is to assist in the rehabilitation of handicapped persons. To the extent that such agencies receive financial assistance from the Department, they are covered by subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from servicing only handicapped persons. Indeed, §104.4(c) permits recipients to offer services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons. Many comments suggested requiring state social service agencies to take an	Y	Y
2,197	Title 34: Education PART 105—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF EDUCATION	Federal	Statute			

2,198	§105.1 Purpose	Federal	Statute	The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.	N	N
2,199	§105.2 Application	Federal	Statute	This part applies to all programs or activities conducted by the Department, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.	N	N
2,200	§105.3 Definitions	Federal	Statute	For purposes of this part, the following definitions apply: Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department. For example, auxiliary aids useful for persons with impaired vision include readers, materials in braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDDs), interpreters, notetakers, written materials, and other similar services and devices. Complete complaint means a written statement that contains the complainant's name and address and describes the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination. Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.	N	N
2,201	§§105.4-105.9 [Reserved]	Federal	Statute			

2,202	§105.10 Self-evaluation	Federal	Statute	(a) The Department shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any of those policies and practices is required, the Department shall proceed to make the necessary modifications. (b) The Department shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the self-evaluation process by submitting comments (both oral and written). (c) The Department shall, for at least 3 years following completion of the self-evaluation, maintain on file, and make available for public inspection— (1) A description of areas examined and any problems identified; and (2) A description of any modifications made.	N	N
2,203	§105.11 Notice	Federal	Statute	The Department shall make available, to employees, applicants, participants, beneficiaries, and other interested persons, information regarding the provisions of this part and its applicability to the programs or activities conducted by the Department, and make that information available to them in such manner as the Secretary finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.	N	N
2,204	§§105.12-105.19 [Reserved]	Federal	Statute			

2,205	§105.20 General prohibitions against discrimination	Federal	Statute	(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the Department. (b)(1) The Department, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap— (i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service; (ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; (iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless that action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those	N	N
2,206	§§105.21-105.29 [Reserved]	Federal	Statute			
2,207	§105.30 Employment	Federal	Statute	No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. As provided in §105.41(b), the definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.	N	N
2,208	§105.31 Program accessibility: Discrimination prohibited	Federal	Statute	Except as otherwise provided in §105.32, no qualified individual with handicaps shall, because the Department's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.	N	N

2,209	§105.32 Program accessibility: Existing facilities	Federal	Statute	(a) General. The Department shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not— (1) Necessarily require the Department to make each of its existing facilities accessible to and usable by individuals with handicaps; (2) In the case of historic preservation programs, require the Department to take any action that would result in a substantial impairment of significant historic features of an historic property; or (3)(i) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. (ii) The Department has the burden of proving that compliance with §105.32(a) would result in that alteration or those burdens. (iii) The decision that compliance would result in that alteration or those burdens must be made by the Secretary after considering all of the Department's resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. (iv) If an action would result in that alteration or those burdens, the	N	N
2,210	§105.33 Program accessibility: New construction and alterations	Federal	Statute	Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the Department must be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.	N	N
2,211	§§105.34-105.39 [Reserved]	Federal	Statute			

2,212	§105.40 Communications	Federal	Statute	(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public, as follows: (1)(i) The Department shall furnish appropriate auxiliary aids if necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department. (ii) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the request of the individual with handicaps. (iii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. (2) If the Department communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDDs) or equally effective telecommunication systems must be used. (b) The Department shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. (c) The Department shall provide signs at a primary entrance to each of its	N	N

2,213	§105.41 Compliance procedures	Federal	Statute	(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Department. (b) As provided in §105.30, the Department shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). (c) The Deputy Under Secretary for Management is responsible for coordinating implementation of this section. Complaints may be sent to the U.S. Department of Education, Office of Management, Federal Building No. 6, 400 Maryland Avenue SW., Washington, DC 20202. (d) The Department shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Department may extend this time period for good cause. (e) If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.	N	N
2,214	§105.42 Effective date	Federal	Statute	The effective date of this part is October 9, 1990.	N	N
2,215	Title 34: Education PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE	Federal	Statute			

2,216	Subpart A—Introduction §106.1 Purpose and effective date	Federal	Statute	The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484. The effective date of this part shall be July 21, 1975. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93-568, 88 Stat. 1855, and sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93-380)	N	N
2,217	§106.2 Definitions	Federal	Statute	As used in this part, the term: (a) Title IX means title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686. (b) Department means the Department of Education. (c) Secretary means the Secretary of Education. (d) Assistant Secretary means the Assistant Secretary for Civil Rights of the Department. (e) Reviewing Authority means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part. (f) Administrative law judge means a person appointed by the reviewing authority to preside over a hearing held under this part. (g) Federal financial assistance means any of the following, when authorized or extended under a law administered by the Department: (1) A grant or loan of Federal financial assistance, including funds made available for:	N	N

2,218	§106.3 Remedial and affirmative action and self-evaluation	Federal	Statute	(a) Remedial action. If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination. (b) Affirmative action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246. (c) Self-evaluation. Each recipient education institution shall, within one year of the effective date of this part: (1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity; (2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and (3) Take appropriate remedial steps to eliminate the effects of any	N	N

2,219	§106.4 Assurance required	Federal	Statute	(a) General. Every application for Federal financial assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that the education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with §106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance. (b) Duration of obligation. (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity. (2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property. (3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.	N	N
2,220	§106.5 Transfers of property	Federal	Statute	If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of subpart B of this part. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,221	§106.6 Effect of other requirements	Federal	Statute	(a) Effect of other Federal provisions. The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation. (Authority: Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685) (b) Effect of State or local law or other requirements. The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession. (c) Effect of rules or regulations of private organizations. The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373,	Y	Y
2,222	§106.7 Effect of employment opportunities	Federal	Statute	The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,223	§106.8 Designation of responsible employee and adoption of grievance procedures	Federal	Statute	(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph. (b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,224	§106.9 Dissemination of policy	Federal	Statute	(a) Notification of policy. (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to §106.8, or to the Assistant Secretary. (2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers;	N	N

2,225	Subpart B—Coverage §106.11 Application	Federal	Statute	Except as provided in this subpart, this part 106 applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial assistance. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682) [45 FR 86298, Dec. 30, 1980, as amended at 65 FR 68056, Nov. 13, 2000]	N	N
2,226	§106.12 Educational institutions controlled by religious organizations	Federal	Statute	(a) Application. This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization. (b) Exemption. An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,227	§106.13 Military and merchant marine educational institutions	Federal	Statute	This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,228	§106.14 Membership practices of certain organizations	Federal	Statute	(a) Social fraternities and sororities. This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education. (b) YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls. This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls. (c) Voluntary youth service organizations. This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)	N	N

2,229	§106.15 Admissions	Federal	Statute	(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part. (b) Administratively separate units. For the purposes only of this section, §§106.16 and 106.17, and subpart C, each administratively separate unit shall be deemed to be an educational institution. (c) Application of subpart C. Except as provided in paragraphs (d) and (e) of this section, subpart C applies to each recipient. A recipient to which subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart. (d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients which are educational institutions, subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education. (e) Public institutions of undergraduate higher education. Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,230	§106.16 Educational institutions eligible to submit transition plans	Federal	Statute	(a) Application. This section applies to each educational institution to which subpart C applies which: (1) Admitted only students of one sex as regular students as of June 23, 1972; or (2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965. (b) Provision for transition plans. An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of subpart C unless it is carrying out a transition plan approved by the Secretary as described in §106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,231	§106.17 Transition plans	Federal	Statute	(a) Submission of plans. An institution to which §106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit. (b) Content of plans. In order to be approved by the Secretary a transition plan shall: (1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan. (2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so. (3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.	N	N

2,232	Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited §106.21 Admission	Federal	Statute	(a) General. No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§106.16 and 106.17. (b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not: (i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise; (ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or (iii) Otherwise treat one individual differently from another on the basis of sex. (2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable. (c) Prohibitions relating to marital or parental status. In determining	N	N
2,233	§106.22 Preference in admission	Federal	Statute	A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,234	§106.23 Recruitment	Federal	Statute	(a) Nondiscriminatory recruitment. A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to §106.3(a), and may choose to undertake such efforts as affirmative action pursuant to §106.3(b). (b) Recruitment at certain institutions. A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,235	Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited §106.31 Education programs or activities	Federal	Statute	(a) General. Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which subpart C does not apply, or (2) an entity, not a recipient, to which subpart C would not apply if the entity were a recipient. (b) Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex: (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; (3) Deny any person any such aid, benefit, or service; (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;	N	N

2,236	§106.32 Housing	Federal	Statute	(a) Generally. A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students). (b) Housing provided by recipient. (1) A recipient may provide separate housing on the basis of sex. (2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole: (i) Proportionate in quantity to the number of students of that sex applying for such housing; and (ii) Comparable in quality and cost to the student. (c) Other housing. (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient. (2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a	Y	Y
2,237	§106.33 Comparable facilities	Federal	Statute	A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)	N	N

2,238	§106.34 Access to classes and schools	Federal	Statute	(a) General standard. Except as provided for in this section or otherwise in this part, a recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex. (1) Contact sports in physical education classes. This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact. (2) Ability grouping in physical education classes. This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex. (3) Human sexuality classes. Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality may be conducted in separate sessions for boys and girls. (4) Choruses. Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. (b) Classes and extracurricular activities—(1) General standard. Subject to	Y	Y
2,239	§106.35 Access to institutions of vocational education	Federal	Statute	A recipient shall not, on the basis of sex, exclude any person from admission to any institution of vocational education operated by that recipient. (Authority: 20 U.S.C. 1681, 1682) [71 FR 62543, Oct. 25, 2006]	N	N

2,240	§106.36 Counseling and use of appraisal and counseling materials	Federal	Statute	(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission. (b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application. (c) Disproportion in classes. Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373,	Y	Y

2,241	§106.37 Financial assistance	Federal	Statute	(a) General. Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status. (b) Financial aid established by certain legal instruments. (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; Provided, That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.	N	N
2,242	§106.38 Employment assistance to students	Federal	Statute	(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its students: (1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and (2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices. (b) Employment of students by recipients. A recipient which employs any of its students shall not do so in a manner which violates subpart E of this part. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,243	§106.39 Health and insurance benefits and services	Federal	Statute	In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,244	§106.40 Marital or parental status	Federal	Statute	(a) Status generally. A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex. (b) Pregnancy and related conditions. (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient. (2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician. (3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students. (4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the	N	N

2,245	§106.41 Athletics	Federal	Statute	(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis. (b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact. (c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:	N	N
2,246	§106.42 Textbooks and curricular material	Federal	Statute	Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,247	§106.43 Standards for measuring skill or progress in physical education classes	Federal	Statute	If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have that effect. (Authority: 20 U.S.C. 1681, 1682) [71 FR 62543, Oct. 25, 2006]	N	N

2,248	Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited	Federal	Statute			
2,249	§106.51 Employment	Federal	Statute	(a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance. (2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex. (3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient. (4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.	N	N

2,250	§106.52 Employment criteria	Federal	Statute	A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless: (a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and (b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,251	§106.53 Recruitment	Federal	Statute	(a) Nondiscriminatory recruitment and hiring. A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination. (b) Recruitment patterns. A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,252	§106.54 Compensation	Federal	Statute	A recipient shall not make or enforce any policy or practice which, on the basis of sex: (a) Makes distinctions in rates of pay or other compensation; (b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,253	§106.55 Job classification and structure	Federal	Statute	A recipient shall not: (a) Classify a job as being for males or for females; (b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or (c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in §106.61. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,254	§106.56 Fringe benefits	Federal	Statute	(a) Fringe benefits defined. For purposes of this part, fringe benefits means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of §106.54. (b) Prohibitions. A recipient shall not: (1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex; (2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or (3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,255	§106.57 Marital or parental status	Federal	Statute	(a) General. A recipient shall not apply any policy or take any employment action: (1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or (2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit. (b) Pregnancy. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom. (c) Pregnancy as a temporary disability. A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment. (d) Pregnancy leave. In the case of a recipient which does not maintain a	N	N
2,256	§106.58 Effect of State or local law or other requirements	Federal	Statute	(a) Prohibitory requirements. The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex. (b) Benefits. A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,257	§106.59 Advertising	Federal	Statute	A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona-fide occupational qualification for the particular job in question. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N
2,258	§106.60 Pre-employment inquiries	Federal	Statute	(a) Marital status. A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.” (b) Sex. A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682	N	N
2,259	§106.61 Sex as a bona-fide occupational qualification	Federal	Statute	A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.	N	N
2,260	Subpart F—Procedures [Interim] §106.71 Procedures	Federal	Statute	The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6-100.11 and 34 CFR, part 101. (Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)	N	N

2,261	Subject Index to Title IX Preamble and Regulation1	Federal	Statute	1Preamble paragraph numbers are in brackets [ ]. A Access to Course Offerings [43, 55, 56, 57, 58]; 106.34 Access to Schools Operated by LEA's, [44]; 106.35 Admissions, [5, 6, 30]; 106.15, 106.21 Affirmative and remedial action, [16, 17, 24]; 106.3(a); (b) Administratively separate units, [30]; 106.15(b) 106.2(o) Educational Institutions, [30], 106.15(d), 106.2(n) General, 106.21(a), 106.2(p), Prohibitions relating to marital and parental status, [32, 36]; 106.21(c) Professional schools, [30], 106.2(m) Public institutions of undergraduate higher education, 106.15(e) Recruitment, [34, 35]; 106.23	N	N
2,262	Appendix A to Part 106—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs	Federal	Statute	Editorial Note: For the text of these guidelines, see 34 CFR part 100, appendix B. [44 FR 17168, Mar. 21, 1979]	N	

2,263	Title 34: Education PART 108—EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES FOR THE BOY SCOUTS OF AMERICA AND OTHER DESIGNATED YOUTH GROUPS	Federal	Statute			
2,264	§108.1 Purpose	Federal	Statute	The purpose of this part is to implement the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905. (Authority: 20 U.S.C. 7905)	N	N
2,265	§108.2 Applicability	Federal	Statute	This part applies to any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department. (Authority: 20 U.S.C. 7905)	N	N

2,266	§108.3 Definitions	Federal	Statute	The following definitions apply to this part: (a) Act means the Boy Scouts of America Equal Access Act, section 9525 of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425, 1981-82 (20 U.S.C. 7905). (b) Boy Scouts means the organization named “Boy Scouts of America,” which has a Federal charter and which is listed as an organization in title 36 of the United States Code (Patriotic and National Observances, Ceremonies, and Organizations) in Subtitle II (Patriotic and National Organizations), Part B (Organizations), Chapter 309 (Boy Scouts of America). (c) Covered entity means any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department. (d) Department means the Department of Education. (e) Designated open forum means that an elementary school or secondary school designates a time and place for one or more outside youth or community groups to meet on school premises or in school facilities, including during the hours in which attendance at the school is compulsory, for reasons other than to provide the school's educational program.	N	N
2,267	§108.4 Effect of State or local law	Federal	Statute	The obligation of a covered entity to comply with the Act and this part is not obviated or alleviated by any State or local law or other requirement. (Authority: 20 U.S.C. 7905)	N	N

2,268	§108.5 Compliance obligations	Federal	Statute	(a) The obligation of covered entities to comply with the Act and this part is not limited by the nature or extent of their authority to make decisions about the use of school premises or facilities. (b) Consistent with the requirements of §108.6, a covered entity must provide equal access to any group that is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. A covered entity may require that any group seeking equal access inform the covered entity whether the group is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. A covered entity's failure to request this information is not a defense to a covered entity's noncompliance with the Act or this part. (Authority: 20 U.S.C. 7905)	N	N
2,269	§108.6 Equal access	Federal	Statute	(a) General. Consistent with the requirements of paragraph (b) of this section, no covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group that requests to conduct a meeting within that covered entity's designated open forum or limited public forum. No covered entity shall deny that access or opportunity or discriminate for reasons including the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts or of the Title 36 youth group. (b) Specific requirements—(1) Meetings. Any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group that requests to conduct a meeting in the covered entity's designated open forum or limited public forum must be given equal access to school premises or facilities to conduct meetings. (2) Benefits and services. Any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group that requests to conduct a meeting as described in paragraph (b)(1) of this section must be given equal access to any other benefits and services provided to one or more outside youth or community groups that are allowed to meet in that same forum. These benefits and services may include, but are not necessarily limited to, school-related means of communication, such as bulletin board notices and literature distribution, and recruitment.	N	N

2,270	§108.7 Voluntary sponsorship	Federal	Statute	Nothing in the Act or this part shall be construed to require any school, agency, or school served by an agency to sponsor any group officially affiliated with the Boy Scouts or with any other Title 36 youth group. (Authority: 20 U.S.C. 7905)	N	N
2,271	§108.8 Assurances	Federal	Statute	An applicant for funds made available through the Department to which this part applies must submit an assurance that the applicant will comply with the Act and this part. The assurance shall be in effect for the period during which funds made available through the Department are extended. The Department specifies the form of the assurance, including the extent to which assurances will be required concerning the compliance obligations of subgrantees, contractors and subcontractors, and other participants, and provisions that give the United States a right to seek its judicial enforcement. An applicant may incorporate this assurance by reference in subsequent applications to the Department. (Approved by the Office of Management and Budget under control number 1870-0503) (Authority: 20 U.S.C. 7905)	N	N
2,272	§108.9 Procedures	Federal	Statute	The procedural provisions applicable to title VI of the Civil Rights Act of 1964, which are found in 34 CFR 100.6 through 100.11 and 34 CFR part 101, apply to this part, except that, notwithstanding these provisions and any other provision of law, no funds made available through the Department shall be provided to any school, agency, or school served by an agency that fails to comply with the Act or this part. (Authority: 20 U.S.C. 7905)	N	N

2,273	Title 34: Education PART 110—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE	Federal	Statute			
2,274	Subpart A—General §110.1 What is the purpose of ED's age discrimination regulations?	Federal	Statute	The purpose of these regulations is to set out ED's rules for implementing the Age Discrimination Act of 1975. The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act permits federally assisted programs or activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age that meet the requirements of the Act. (Authority: 42 U.S.C. 6101-6103) [58 FR 40197, July 27, 1993, as amended at 65 FR 68056, Nov. 13, 2000]	N	N

2,275	§110.2 To what programs or activities do these regulations apply?	Federal	Statute	(a) These regulations apply to any program or activity receiving Federal financial assistance from ED. (b) These regulations do not apply to— (1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body that— (i) Provides any benefits or assistance to persons based on age; (ii) Establishes criteria for participation in age-related terms; or (iii) Describes intended beneficiaries or target groups in age-related terms; or (2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except any program or activity receiving Federal financial assistance for employment under the Job Training Partnership Act (29 U.S.C. 1501 et seq.). (Authority: 42 U.S.C. 6103)	N	N

2,276	§110.3 What definitions apply?	Federal	Statute	The following definitions apply to these regulations: Act means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94-135). Action means any act, activity, policy, rule, standard, or method of administration, or the use of any policy, rule, standard, or method of administration. Age means how old a person is, or the number of years from the date of a person's birth. Age distinction means any action using age or an age-related term. Age-related term means a word or words that necessarily imply a particular age or range of ages (e.g., “children,” “adult,” “older persons,” but not “student” or “grade”). Agency means a Federal department or agency that is empowered to extend financial assistance. Applicant for Federal financial assistance means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient or subrecipient. Department means the United States Department of Education.	N	N

2,277	Subpart B—Standards for Determining Age Discrimination §110.10 Rules against age discrimination	Federal	Statute	The rules stated in this section are subject to the exceptions contained in §§110.12 and 110.13 of these regulations. (a) General rule. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (b) Specific rules. A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions that have the effect, on the basis of age, of— (1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or (2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance. (c) Other forms of discrimination. The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list. (Authority: 42 U.S.C. 6101-6103)	N	N
2,278	§110.11 Definitions of “normal operation” and “statutory objective.”	Federal	Statute	For purposes of these regulations, the terms normal operation and statutory objective have the following meanings: (a) Normal operation means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. (b) Statutory objective means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body. (Authority: 42 U.S.C. 6103)	N	N

2,279	§110.12 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.	Federal	Statute	A recipient is permitted to take an action otherwise prohibited by §110.10 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if— (a) Age is used as a measure or approximation of one or more other characteristics; (b) The other characteristic or characteristics must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; (c) The other characteristic or characteristics can be reasonably measured or approximated by the use of age; and (d) The other characteristic or characteristics are impractical to measure directly on an individual basis. (Authority: 42 U.S.C. 6103)	N	N
2,280	§110.13 Exceptions to the rules against age discrimination: Reasonable factors other than age.	Federal	Statute	A recipient is permitted to take an action otherwise prohibited by §110.10 that is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective. (Authority: 42 U.S.C. 6103)	N	N
2,281	§110.14 Burden of proof	Federal	Statute	The burden of proving that an age distinction or other action falls within the exceptions outlined in §§110.12 and 110.13 is on the recipient of Federal financial assistance. (Authority: 42 U.S.C. 6104)	N	N

2,282	§110.15 Affirmative action by recipients	Federal	Statute	Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age. (Authority: 42 U.S.C. 6103)	N	N
2,283	§110.16 Special benefits for children and the elderly	Federal	Statute	If a recipient operating a program or activity provides special benefits to the elderly or to children, the use of age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of §110.12. (Authority: 42 U.S.C. 6103) [58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]	N	N
2,284	§110.17 Age distinctions contained in ED's regulations	Federal	Statute	Any age distinction contained in regulations issued by ED is presumed to be necessary to the achievement of a statutory objective of the program or activity to which the regulations apply, notwithstanding the provisions of §110.12. (Authority: 42 U.S.C. 6103) [58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]	N	N
2,285	Subpart C—Duties of ED Recipients §110.20 General responsibilities	Federal	Statute	Each ED recipient has primary responsibility for ensuring that its program or activity is in compliance with the Act and these regulations and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford ED access to its records to the extent required for ED to determine whether the recipient is in compliance with the Act and these regulations. (Authority: 42 U.S.C. 6103) [58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]	Y	Y

2,286	§110.21 Notice to subrecipients	Federal	Statute	If the recipient initially receiving funds makes the funds available to a subrecipient, the recipient shall notify the subrecipient of its obligations under the Act and these regulations. (Authority: 42 U.S.C. 6103)	N	N
2,287	§110.22 Information requirements	Federal	Statute	Each recipient shall— (a) Provide ED with information that ED determines is necessary to ascertain whether the recipient is in compliance with the Act and these regulations; and (b) Permit reasonable access by ED to the books, records, accounts, reports, and other recipient facilities and sources of information to the extent ED determines is necessary to ascertain whether a recipient is in compliance with the Act and these regulations. (Authority: 42 U.S.C. 6103)	Y	Y
2,288	§110.23 Assurances required	Federal	Statute	(a) Assurances. An applicant for Federal financial assistance to which these regulations apply shall sign a written assurance, on a form specified by ED, that the program or activity will be operated in compliance with these regulations. An applicant may incorporate this assurance by reference in subsequent applications to ED. (b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. (2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property. (3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended. (c) Covenants. (1) If Federal financial assistance is provided in the form of real property or interest in the property from ED, the instrument effecting or recording this transfer must contain a covenant running with the land to assure nondiscrimination for the period during which the real property is	Y	Y

2,289	§110.24 Recipient assessment of age distinctions	Federal	Statute	(a) As part of a compliance review under §110.30 or a complaint investigation under §110.31, ED may require a recipient employing the equivalent of 15 or more full-time employees to complete a written self-evaluation, in a manner specified by ED, of any age distinction imposed in its program or activity receiving Federal financial assistance from ED to assess the recipient's compliance with the Act. (b) Whenever an assessment indicates a violation of the Act or these regulations, the recipient shall take corrective action. (Authority: 42 U.S.C. 6103)	N	N
2,290	§110.25 Designation of responsible employee, notice, and grievance procedures	Federal	Statute	(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Act and these regulations, including investigation of any complaints that the recipient receives alleging any actions that are prohibited by the Act and these regulations. (b) Notice. A recipient shall notify its beneficiaries, in a continuing manner, of information regarding the provisions of the Act and these regulations. The notification must also identify the responsible employee by name or title, address, and telephone number. (c) Grievance procedures. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Act or these regulations. (Authority: 42 U.S.C. 6103) [58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]	N	N

2,291	Subpart D—Investigation, Conciliation, and Enforcement Procedures §110.30 Compliance reviews	Federal	Statute	(a) ED may conduct compliance reviews, pre-award reviews, and other similar procedures that permit ED to investigate and correct violations of the Act and of these regulations. ED may conduct these reviews in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations occurred. (b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, ED attempts to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, ED arranges for enforcement as described in §110.35. (Authority: 42 U.S.C. 6103)	N	N
2,292	§110.31 Complaints	Federal	Statute	(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with ED alleging discrimination prohibited by the Act or by these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged discrimination. However, for good cause shown, ED may extend this time limit. (b) ED attempts to facilitate the filing of complaints, if possible, by— (1) Accepting as a complete complaint any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant; (2) Freely permitting a complainant to add information to the complaint to meet the requirements of a complete complaint; (3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations; (4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and (5) Notifying the complainant and the recipient (or their representatives) of	N	N

2,293	§110.32 Mediation	Federal	Statute	(a) ED promptly refers to the Federal Mediation and Conciliation Service or to the mediation agency designated by the Secretary of Health and Human Services, all complaints that— (1) Fall within the jurisdiction of the Act and these regulations, unless the age distinction complained of is clearly within an exemption under §110.2(b); and (2) Contain all information necessary for further processing. (b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or to make an informed judgment that an agreement is not possible. The recipient and the complainant need not meet with the mediator at the same time, and the meeting may be conducted by telephone or other means of effective dialogue if a personal meeting between the party and the mediator is impractical. (c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to ED. ED takes no further action on the complaint unless informed that the complainant or the recipient fails to comply with the agreement, at which time ED reinstates the complaint.	N	N

2,294	§110.33 Investigation	Federal	Statute	(a) Initial investigation. ED investigates complaints that are unresolved after mediation or reopened because of a violation of the mediation agreement. ED uses methods during the investigation to encourage voluntary resolution of the complaint, including discussions with the complainant and recipient to establish the facts and, if possible, resolve the complaint to the mutual satisfaction of the parties. ED may seek the assistance of any involved State, local, or other Federal agency. (b) Formal investigation, conciliation, and hearing. If ED cannot resolve the complaint during the early stages of the investigation, ED completes the investigation of the complaint and makes formal findings. If the investigation indicates a violation of the Act or these regulations, ED attempts to achieve voluntary compliance. If ED cannot obtain voluntary compliance, ED begins enforcement as described in §110.35. (Authority: 42 U.S.C. 6103) [58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]	N	N
2,295	§110.34 Prohibition against intimidation or retaliation	Federal	Statute	A recipient may not engage in acts of intimidation or retaliation against any person who— (a) Attempts to assert a right protected by the Act or these regulations; or (b) Cooperates in any mediation, investigation, hearing, or other part of ED's investigation, conciliation, and enforcement process. (Authority: 42 U.S.C. 6103)	N	N

2,296	§110.35 Compliance procedure	Federal	Statute	(a) ED may enforce the Act and these regulations under §110.35(a) (1) or (2) through— (1) Termination of, or refusal to grant or continue, a recipient's Federal financial assistance from ED for a program or activity in which the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. (2) Any other means authorized by law, including, but not limited to— (i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations; or (ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or of these regulations. (b) ED limits any termination or refusal under §110.35(a)(1) to the particular recipient and to the particular program or activity ED finds in violation of the Act or these regulations. ED will not base any part of a termination on a finding with respect to any program or activity that does not receive Federal financial assistance from ED.	N	N
2,297	§110.36 Hearings, decisions, and post-termination proceedings	Federal	Statute	(a) The following ED procedural provisions applicable to Title VI of the Civil Rights Act of 1964 also apply to ED's enforcement of these regulations: 34 CFR 100.9 and 100.10 and 34 CFR part 101. (b) Action taken under section 305 of the Act is subject to judicial review as provided by section 306 of the Act. (Authority: 42 U.S.C. 6104-6105)	N	N

2,298	§110.37 Procedure for disbursal of funds to an alternate recipient	Federal	Statute	(a) If the Secretary withholds funds from a recipient under these regulations, the Secretary may disburse the funds withheld directly to an alternate recipient: any public or nonprofit private organization or agency, or State or political subdivision of the State. (b) The Secretary requires any alternate recipient to demonstrate— (1) The ability to comply with the Act and these regulations; and (2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance. (Authority: 42 U.S.C. 6104) [58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]	N	N
2,299	§110.38 Remedial action by recipients	Federal	Statute	If ED finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action that ED may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated or if the entity that has discriminated is a subrecipient, both recipients or recipient and subrecipient may be required to take remedial action.	N	N

2,300	§110.39 Exhaustion of administrative remedies	Federal	Statute	(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if— (1) One hundred eighty days have elapsed since the complainant filed the complaint with ED, and ED has made no finding with regard to the complaint; or (2) ED issues any finding in favor of the recipient. (b) If ED fails to make a finding within 180 days or issues a finding in favor of the recipient, ED promptly— (1) Advises the complainant of this fact; (2) Advises the complainant of his or her right to bring a civil action for injunctive relief; and (3) Informs the complainant— (i) That a civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business; (ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these	N	N

Carl D. Perkins Career and Technical Education Improvement Act of 2006

Item	Law Number	Jurisdiction	Type of Law	Statuary Requirement and/or Authority Granted	Does this law specify who (customer) the agency must or may serve? (Y/N)	Does the law specify a deliverable (product or service) the agency must or may provide? (Y/N)
2,301	PART A--ALLOTMENT AND ALLOCATION SEC. 111. RESERVATIONS AND STATE ALLOTMENT	Federal	Statute	`(a) Reservations and State Allotment-  `(1) RESERVATIONS- From the sum appropriated under section 9 for each fiscal year, the Secretary shall reserve-- `(A) 0.13 percent to carry out section 115; and  `(B) 1.50 percent to carry out section 116, of which	Y	Y
2,302	SEC. 112. WITHIN STATE ALLOCATION	Federal	Statute	`(a) In General- From the amount allotted to each State under section 111 for a fiscal year, the eligible agency shall make available--  `(1) not less than 85 percent for distribution under section 131 or 132, of which not more than 10 percent of the 85 p	Y	Y
2,303	SEC. 113. ACCOUNTABILITY	Federal	Statute	`(a) Purpose- The purpose of this section is to establish and support State and local performance accountability systems, comprised of the activities described in this section, to assess the effectiveness of the State and the eligible recipients of the St	Y	Y
2,304	SEC. 114. NATIONAL ACTIVITIES	Federal	Statute	`(a) Program Performance Information-  `(1) IN GENERAL- The Secretary shall collect performance information about, and report on, the condition of career and technical education and on the effectiveness of State and local programs, services, and activitie	Y	Y
2,305	SEC. 115. ASSISTANCE FOR THE OUTLYING AREAS	Federal	Statute	`(a) Outlying Areas- From funds reserved pursuant to section 111(a)(1)(A), the Secretary shall--  `(1) make a grant in the amount of $660,000 to Guam; `(2) make a grant in the amount of $350,000 to each of American Samoa and the Commonwealth of the North	N	N
2,306	SEC. 116. NATIVE AMERICAN PROGRAMS	Federal	Statute	`(a) Definitions- In this section:  `(1) ALASKA NATIVE- The term `Alaska Native' means a Native as such term is defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).  `(2) BUREAU-FUNDED SCHOOL- The term `Bureau-funded school' h	N	N
2,307	SEC. 117. TRIBALLY CONTROLLED POSTSECONDARY CAREER AND TECHNICAL INSTITUTIONS	Federal	Statute	`(a) Grants Authorized- The Secretary shall, subject to the availability of appropriations, make grants pursuant to this section to tribally controlled postsecondary career and technical institutions that are not receiving Federal support under the Tribal	N	N

2,308	SEC. 118. OCCUPATIONAL AND EMPLOYMENT INFORMATION	Federal	Statute	`(a) National Activities- From funds appropriated under subsection (g), the Secretary, in consultation with appropriate Federal agencies, is authorized--  `(1) to provide assistance to an entity to enable the entity-- `(A) to provide technical assistance	N	N
2,309	PART B--STATE PROVISIONS SEC. 121. STATE ADMINISTRATION	Federal	Statute	`(a) Eligible Agency Responsibilities- The responsibilities of an eligible agency under this title shall include--  `(1) coordination of the development, submission, and implementation of the State plan, and the evaluation of the program, services, and ac	Y	Y
2,310	SEC. 122. STATE PLAN	Federal	Statute	`(a) State Plan-  `(1) IN GENERAL- Each eligible agency desiring assistance under this title for any fiscal year shall prepare and submit to the Secretary a State plan for a 6-year period, together with such annual revisions as the eligible agency determi	Y	Y
2,311	SEC. 123. IMPROVEMENT PLANS	Federal	Statute	`(a) State Program Improvement-  `(1) PLAN- If a State fails to meet at least 90 percent of an agreed upon State adjusted level of performance for any of the core indicators of performance described in section 113(b)(3), the eligible agency shall develop	Y	Y
2,312	SEC. 124. STATE LEADERSHIP ACTIVITIES	Federal	Statute	`(a) General Authority- From amounts reserved under section 112(a)(2), each eligible agency shall conduct State leadership activities.  `(b) Required Uses of Funds- The State leadership activities described in subsection (a) shall include-- `(1) an asses	Y	Y
2,313	PART C--LOCAL PROVISIONS SEC. 131. DISTRIBUTION OF FUNDS TO SECONDARY EDUCATION PROGRAMS	Federal	Statute	`(a) Distribution Rules- Except as provided in section 133 and as otherwise provided in this section, each eligible agency shall distribute the portion of funds made available under section 112(a)(1) to carry out this section to local educational agencies	N	N
2,314	SEC. 132. DISTRIBUTION OF FUNDS FOR POSTSECONDARY EDUCATION PROGRAMS	Federal	Statute	`(a) Allocation-  `(1) IN GENERAL- Except as provided in subsections (b) and (c) and section 133, each eligible agency shall distribute the portion of the funds made available under section 112(a)(1) to carry out this section for any fiscal year to eligib	N	N
2,315	SEC. 133. SPECIAL RULES FOR CAREER AND TECHNICAL EDUCATION	Federal	Statute	`(a) Special Rule for Minimal Allocation-  `(1) GENERAL AUTHORITY- Notwithstanding the provisions of sections 131 and 132 and in order to make a more equitable distribution of funds for programs serving the areas of greatest economic need, for any program	N	N

2,316	SEC. 134. LOCAL PLAN FOR CAREER AND TECHNICAL EDUCATION PROGRAMS	Federal	Statute	`(a) Local Plan Required- Any eligible recipient desiring financial assistance under this part shall, in accordance with requirements established by the eligible agency (in consultation with such other educational training entities as the eligible agency	Y	Y
2,317	SEC. 135. LOCAL USES OF FUNDS	Federal	Statute	`(a) General Authority- Each eligible recipient that receives funds under this part shall use such funds to improve career and technical education programs.  `(b) Requirements for Uses of Funds- Funds made available to eligible recipients under this part	Y	Y
2,318	SEC. 201. STATE ALLOTMENT AND APPLICATION	Federal	Statute	`(a) In General- For any fiscal year, the Secretary shall allot the amount made available under section 206 among the States in the same manner as funds are allotted to States under paragraph (2) of section 111(a).  `(b) Payments to Eligible Agencies- The	Y	Y
2,319	SEC. 202. CONSOLIDATION OF FUNDS	Federal	Statute	`(a) In General- An eligible agency receiving an allotment under sections 111 and 201 may choose to consolidate all, or a portion of, funds received under section 201 with funds received under section 111 in order to carry out the activities described in	Y	Y
2,320	SEC. 203. TECH PREP PROGRAM	Federal	Statute	`(a) Grant Program Authorized-  `(1) IN GENERAL- From amounts made available to each eligible agency under section 201, the eligible agency, in accordance with the provisions of this title, shall award grants, on a competitive basis or on the basis of a f	Y	Y
2,321	SEC. 204. CONSORTIUM APPLICATIONS	Federal	Statute	`(a) In General- Each consortium that desires to receive a grant under this title shall submit an application to the eligible agency at such time and in such manner as the eligible agency shall require.  `(b) Plan- Each application submitted under this se	N	N
2,322	SEC. 205. REPORT	Federal	Statute	Each eligible agency that receives an allotment under this title annually shall prepare and submit to the Secretary a report on the effectiveness of the tech prep programs assisted under this title, including a description of how grants were awarded withi	N	N
2,323	SEC. 206. AUTHORIZATION OF APPROPRIATIONS	Federal	Statute	There are authorized to be appropriated to carry out this title such sums as may be necessary for fiscal year 2007 and each of the 5 succeeding fiscal years.	N	N

Title III - General Provisions Part A - Federal Administrative Provisions Sec. 311. Fiscal Requirements

Item	Law Number	Jurisdiction	Type of Law	Statuary Requirement and/or Authority Granted	Does this law specify who (customer) the agency must or may serve? (Y/N)	Does the law specify a deliverable (product or service) the agency must or may provide? (Y/N)
2,324	TITLE III--GENERAL PROVISIONS PART A--FEDERAL ADMINISTRATIVE PROVISIONS SEC. 311. FISCAL REQUIREMENTS	Federal	Statute	`(a) Supplement Not Supplant- Funds made available under this Act for career and technical education activities shall supplement, and shall not supplant, non-Federal funds expended to carry out career and technical education activities and tech prep progr	N	N
2,325	SEC. 312. AUTHORITY TO MAKE PAYMENTS.	Federal	Statute	Any authority to make payments or to enter into contracts under this Act shall be available only to such extent or in such amounts as are provided in advance in appropriation Acts.	N	N
2,326	SEC. 313. CONSTRUCTION	Federal	Statute	Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of a private, religious, or home school, regardless of whether a home school is treated as a private school or home school under State law	N	N
2,327	SEC. 314. VOLUNTARY SELECTION AND PARTICIPATION	Federal	Statute	`No funds made available under this Act shall be used--  `(1) to require any secondary school student to choose or pursue a specific career path or major; or `(2) to mandate that any individual participate in a career and technical education program, inc	N	N
2,328	SEC. 315. LIMITATION FOR CERTAIN STUDENTS	Federal	Statute	No funds received under this Act may be used to provide career and technical education programs to students prior to the seventh grade, except that equipment and facilities purchased with funds under this Act may be used by such students.	N	N
2,329	SEC. 316. FEDERAL LAWS GUARANTEEING CIVIL RIGHTS	Federal	Statute	Nothing in this Act shall be construed to be inconsistent with applicable Federal law prohibiting discrimination on the basis of race, color, sex, national origin, age, or disability in the provision of Federal programs or services.	N	N
2,330	SEC. 317. PARTICIPATION OF PRIVATE SCHOOL PERSONNEL AND CHILDREN	Federal	Statute	`(a) Personnel- An eligible agency or eligible recipient that uses funds under this Act for in-service and preservice career and technical education professional development programs for career and technical education teachers, administrators, and other p	Y	Y
2,331	SEC. 318. LIMITATION ON FEDERAL REGULATIONS	Federal	Statute	The Secretary may issue regulations under this Act only to the extent necessary to administer and ensure compliance with the specific requirements of this Act.	N	N
2,332	PART B--STATE ADMINISTRATIVE PROVISIONS SEC. 321. JOINT FUNDING	Federal	Statute	`(a) General Authority- Funds made available to eligible agencies under this Act may be used to provide additional funds under an applicable program if--  `(1) such program otherwise meets the requirements of this Act and the requirements of the applicabl	Y	Y

2,333	SEC. 322. PROHIBITION ON USE OF FUNDS TO INDUCE OUT-OF-STATE RELOCATION OF BUSINESSES.	Federal	Statute	`No funds provided under this Act shall be used for the purpose of directly providing incentives or inducements to an employer to relocate a business enterprise from one State to another State if such relocation will result in a reduction in the number of	N	N
2,334	SEC. 323. STATE ADMINISTRATIVE COSTS	Federal	Statute	`(a) General Rule- Except as provided in subsection (b), for each fiscal year for which an eligible agency receives assistance under this Act, the eligible agency shall provide, from non-Federal sources for the costs the eligible agency incurs for the adm	Y	Y
2,335	SEC. 324. STUDENT ASSISTANCE AND OTHER FEDERAL PROGRAMS	Federal	Statute	`(a) Attendance Costs Not Treated as Income or Resources- The portion of any student financial assistance received under this Act that is made available for attendance costs described in subsection (b) shall not be considered as income or resources in det	N	N
2,336	SEC. 2. TECHNICAL AMENDMENTS TO OTHER LAWS	Federal	Statute	(a) Immigration and Nationality Act- Section 245A(h)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(C)) is amended by striking `Carl D. Perkins Vocational and Technical Education Act of 1998' and inserting `The Carl D. Perkins Career a	N	N
2,337	SEC. 132. DISTRIBUTION OF FUNDS FOR POSTSECONDARY EDUCATION PROGRAMS	Federal	Statute	`(a) Allocation-  `(1) IN GENERAL- Except as provided in subsections (b) and (c) and section 133, each eligible agency shall distribute the portion of the funds made available under section 112(a)(1) to carry out this section for any fiscal year to eligib	Y	Y
2,338	SEC. 133. SPECIAL RULES FOR CAREER AND TECHNICAL EDUCATION	Federal	Statute	`(a) Special Rule for Minimal Allocation-  `(1) GENERAL AUTHORITY- Notwithstanding the provisions of sections 131 and 132 and in order to make a more equitable distribution of funds for programs serving the areas of greatest economic need, for any program	N	N
2,339	SEC. 134. LOCAL PLAN FOR CAREER AND TECHNICAL EDUCATION PROGRAMS	Federal	Statute	`(a) Local Plan Required- Any eligible recipient desiring financial assistance under this part shall, in accordance with requirements established by the eligible agency (in consultation with such other educational training entities as the eligible agency	Y	Y
2,340	SEC. 135. LOCAL USES OF FUNDS	Federal	Statute	`(a) General Authority- Each eligible recipient that receives funds under this part shall use such funds to improve career and technical education programs.  `(b) Requirements for Uses of Funds- Funds made available to eligible recipients under this part	Y	Y
2,341	SEC. 201. STATE ALLOTMENT AND APPLICATION	Federal	Statute	`(a) In General- For any fiscal year, the Secretary shall allot the amount made available under section 206 among the States in the same manner as funds are allotted to States under paragraph (2) of section 111(a).  `(b) Payments to Eligible Agencies- The	N	N
2,342	SEC. 202. CONSOLIDATION OF FUNDS	Federal	Statute	`(a) In General- An eligible agency receiving an allotment under sections 111 and 201 may choose to consolidate all, or a portion of, funds received under section 201 with funds received under section 111 in order to carry out the activities described in	Y	Y
2,343	SEC. 203. TECH PREP PROGRAM	Federal	Statute	`(a) Grant Program Authorized-  `(1) IN GENERAL- From amounts made available to each eligible agency under section 201, the eligible agency, in accordance with the provisions of this title, shall award grants, on a competitive basis or on the basis of a f	Y	Y

2,344	SEC. 204. CONSORTIUM APPLICATIONS	Federal	Statute	`(a) In General- Each consortium that desires to receive a grant under this title shall submit an application to the eligible agency at such time and in such manner as the eligible agency shall require.  `(b) Plan- Each application submitted under this se	N	N
2,345	SEC. 205. REPORT	Federal	Statute	Each eligible agency that receives an allotment under this title annually shall prepare and submit to the Secretary a report on the effectiveness of the tech prep programs assisted under this title, including a description of how grants were awarded withi	Y	Y
2,346	SEC. 206. AUTHORIZATION OF APPROPRIATIONS	Federal	Statute	There are authorized to be appropriated to carry out this title such sums as may be necessary for fiscal year 2007 and each of the 5 succeeding fiscal years.	N	N