Education to respond in a timely manner so interest would not be an issue. However, they believed that if the Federal Government was not responsive within a specific time frame, interest should be paid to the States.

Discussion: The purpose of the CMIA is to achieve efficient, equitable cash management practices so that no interest is exchanged. It is prudent for the Department of Education to take action to correct past practices regarding the acceptance of State plans that are submitted late. The CMIA requires the Secretary of Treasury to regulate and enforce timely disbursements of funds by Federal agencies. The final regulations require States to submit substantially approvable plans by specific dates, and the Department to respond in a timely manner, or pay interest to the States in cases where States use their own funds to pay for Federal program obligations during a period of delay caused by the Department. The Secretary is committed to conducting timely reviews of State plans.

Change: None.

What does substantially approvable mean?

Comment: Many commenters asked the Secretary to define "substantially approvable," stressing the heightened importance of its meaning now that the Secretary has decided not to grant preaward costs. Some of the commenters expressed the fear that the term could and would be interpreted differently by every program official who approves State plans. Others asked that explicit criteria be included in a definition of the term or that a term different than substantially approvable be used as a test to determine whether funds should flow to a State. One commenter suggested that the Department should authorize the flow of funds if a State made a "good faith" submission.

One commenter stated that there have been numerous requests to reword sections of its State plans that have been approved by other staff in past years and that the State had been asked to move sentences from one page to another or to repeat sentences that appear on one page at a later place in the State plan. To this commenter, it was unclear whether the failure to respond to these requests would have rendered the plan not substantially approvable.

Another commenter was concerned that if substantially approvable is interpreted to mean not just submission of required components, but resolution of disagreements about approvable content, the term must mean the same thing as "fully approvable." This commenter believed that disagreements

over interpretations of content should not delay the allocation of funds because these disagreements often take months to resolve.

Some of the commenters asked exactly what documents had to be submitted to determine whether a plan was substantially approvable. One recommended that the Department establish a regulatory list of required documents so that there could be no ambiguity about what was required to be submitted.

One commenter was concerned that minor modifications or submission of additional information should not delay the availability of Federal funds for obligation by the State.

Discussion: The Secretary has decided to continue using the term "substantially approvable" as the test for whether a State may begin to obligate funds under a program. Most of the programs of the Department and its predecessor, the Education Division of the former Department of Health, Education, and Welfare, have used this term since the early 1970s as the test to determine whether a State may begin to obligate funds. Under this standard, the Department decides whether a plan is substantially approvable based on whether the plan has met substantive requirements under a funding statute and regulations.

While some commenters expressed concern that the substantially approvable standard might be used to defer funding for a State based solely on the need for trivial changes to the State plan, the Department has always made its determination of whether a State plan is substantially approvable based on whether the plan has met substantive requirements under a funding statute and regulations. Thus, the need for minor modifications of a non-substantive nature will not delay the availability of Federal funds for obligation by the State.

The Secretary is aware that in some cases employees of the Department have asked for changes to elements of a State plan that might not be deficient under the "substantially approvable" test. These requests have been motivated by a desire to assist a State in improving its State plan and have been made in the context of other changes that have been requested as necessary to make a plan substantially approvable. In the future, employees of the Department will distinguish their requests so that State officials will know which requests must be satisfied in order to make a State plan substantially approvable.

The Secretary understands the concern that each employee of the Department may interpret the standard

differently, subjecting a State to arbitrary determinations by the Department. However, the Secretary notes that front line employees of the Department who review State plans do not make the final decisions about whether a plan is substantially approvable. Those decisions are made by senior officials in consultation with program managers. Thus, a decision about whether a particular plan is substantially approvable is made by officials who are exposed to a broad array of plans and who exercise their judgment to ensure that States are treated equitably.

The following examples are taken from past experiences of the Department and demonstrate how the term "substantially approvable" has been applied in the context of various programs.

Example 1: Part B of the Individuals With Disabilities Education Act (IDEA)

Under the IDEA, Part B, each participating agency must permit parents to inspect and review any education record relating to their children which is collected, maintained, or used by the agency under Part B. The agency must comply with a parental request to inspect and review records without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made. In one case, the State plan referenced a State statute that required that "After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created." The State was required to ensure that a parent's right to access under the Federal requirement was not limited by State statute in order for its plan to be substantially approvable.

Example 2: Rehabilitation Act of 1973

Section 101(a)(5)(A) of the Rehabilitation Act, as amended in 1992, contains the requirements for the order of selection for services. Under this section, a State plan must show and provide the justification for an order of selection that will be used by the State in determining which individuals with disabilities will be served if the State cannot serve all individuals eligible for services under the Act. The order of selection for the provision of vocational rehabilitation services must be