

February 9, 2011

Submitted at: <http://www.regulations.gov>

James H. Shelton, III
Assistant Deputy Secretary
Office of Innovation and Improvement
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: Investing in Innovation NPR [Docket ID ED-2011-OII-0001]

Dear Assistant Deputy Secretary Shelton:

On behalf of the Software & Information Industry Association (SIIA) and our more than 500 member high-tech companies, I write in response to the U.S. Department of Education's January 10, 2011 notice of proposed revisions (NPR) to priorities, requirements, and selection criteria for the Investing in Innovation (i3) Fund [Docket ID ED-2011-OII-0001]. SIIA appreciates this opportunity to comment on this important program.

SIIA is very supportive of the i3 program, though we believe there is continued room for improvement in both its rules and implementation. SIIA is largely supportive of the proposed revised i3 priorities, requirements, and selection priorities, though we provide several suggestions below for clarifications and additional revisions. SIIA is the principal trade group of the software and digital content industry, representing more than 500 high-tech companies. All SIIA member companies look to the nation's schools to provide a skilled high-tech workforce, while many SIIA members partner with schools to provide educational software, digital curriculum, online services and related technologies. SIIA views technology as both a critical engine of school innovation and improvement, and necessary to meet the Obama Administration's education priorities, federal education program goals, and the nation's educational needs.

Following are SIIA's specific recommendations for revisions to i3 rules:

1. SIIA Reactions to Proposed Revisions in January 10, 2010 Notice [Docket ID ED-2011-OII-0001]

SIIA generally supports the proposed revisions to i3 priorities, requirements, and selection priorities in order to achieve the important purpose of simplifying and improving the design of the i3 program to better achieve its purposes and goals. Following are detailed comments on these proposed revisions:

- i3 Priorities - SIIA generally supports the proposed revision to provide the Secretary with some flexibility to select among the i3 priorities. However, SIIA proposes that the Department submit its proposed priorities for public comment and determine such final priorities based upon this public input. SIIA also notes that the existing priorities are generally broad enough that they should be relevant in most years for the foreseeable future, perhaps mitigating the need to exclude certain priorities in a given year.
- Limits on Grant Awards -- SIIA supports the clarification that limits on grant awards should apply only to a single grant year, and not the life of the i3 program over multiple fiscal years.
- Cost Sharing or Matching -- SIIA supports providing the Secretary the flexibility to determine the required amount of private-sector matching funds or in-kind donations that an eligible applicant must obtain for an i3 competition in FY 2011 and in subsequent fiscal years.

- Selection Criteria and Factors -- SIIA supports the proposed revision providing the Secretary with flexibility to choose selection criteria and factors from among those established in the 2010 i3 NFP, from the menu of EDGAR general selection criteria, and based on statutory provisions. However, as noted above, SIIA again proposes that the Department submit its proposed selection criteria for public comment and determine such final selection criteria based upon this public input.

2. Add “Technology” as a Competitive Preference Priority

SIIA proposes that the Secretary add “technology” as a competitive preference priority, consistent with the inclusion of technology as a final supplemental priority for discretionary grant programs as announced by the Secretary in the December 15, 2010 Federal Register. This new Priority 6 – Technology – reads as follows: “Projects that are designed to improve student achievement or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.”

In its discussion announcing this new priority, the Secretary agreed that “technology can play a vital role in improving student achievement, increasing students’ access to instructional content, and increasing teacher and school leader effectiveness through enhanced professional development. It should also be noted that the Obama Administration’s ESEA Blueprint includes technology as one of several cross-cutting priorities: “Technology, effectively and thoughtfully deployed, can improve how schools work, how teachers teach, and how students learn. Priority may be given to programs, projects, or strategies that leverage digital information or communications technology to accomplish the stated goals of the grant.”

3. Add “Intervention & Service” to Eligible List of “Practice, Strategy or Program”

The i3 rules repeatedly and exclusively reference “practice, strategy, or program” in describing the nature of the innovations to be supported. SIIA is concerned that the proposed rules do not explicitly include, and do not seem to recognize or allow for, grants that include one or more specific interventions, products or services as one of, or the only, core component. While the goal may have been to use broad, seemingly inclusive terms, we believe grant applicants may assume these are not eligible due to their complete omission. We hope this is not the Department’s intent. In contrast, for example, the Department’s What Works Clearinghouse, and much of the research literature around effectiveness, is built around specific interventions or products (broadly defined).

SIIA recommends changes to the i3 priorities, requirements, definitions and selection criteria to both explicitly include interventions and services, including those provided by third parties and those that are published, as well as to adjust rules as appropriate to reflect applications that include as one of, or the only, core component an intervention or service. Perhaps an additional definition may be needed.

SIIA recommends that, in all instances where the rules include “practice, strategy, or program,” that the rules be changed to read either:

“practice, strategy, or program, including interventions and services provided by a third party”

or

“practice, strategy, program, interventions or services, including those provided by a third party.”

4. Status of For-Profit Organizations as Partners and Subgrantees

The i3 statute recognizes the private sector as an important partner in educational innovation and improvement. For example, to be eligible, an applicant must: “Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.” Yet, the i3 rules do not allow for-profit entities to receive subgrants as partners.

SIIA recommends that the rules be revised to either allow for-profits as “official partners” or allow subgrants to “other partners.”

SIIA notes that for-profit organizations provide the following critical roles in many i3 grants, and in educational improvement:

- provider of programs, including interventions or services, that are a core component of the innovation;
- providers of professional development, technical assistance, technology platforms, etc. necessary to scale a practice, strategy or program; and
- philanthropic provider of matching funds, including in-kind contributions.

In some cases, two or all three of those roles may be served by the same entity, but multiple roles, including providing of matching funds, should not be assumed, implied or required. In many cases, innovation grants may be designed around a core program, including an intervention or service, provided by a third-party private, for-profit entity. In most cases, innovation grantees may be looking to for-profit providers for the support necessary to scale.

SIIA recommends that these roles be clarified and differentiated in the revised i3 priorities, requirements, and criteria.

SIIA further recommends that, where the role of partners is listed and where examples are given, that “for-profit organizations” be included.

5. Intellectual Property

There continues to be some confusion about the (rights to) use by contractors, grantees and the U.S. Department of Education of intellectual property developed (e.g., created or revised) with i3 grant funds. In addition to this lack of clarity in some cases, SIIA believes the current Department rules may not have the flexibility needed in this area to best leverage grant funds to maximize the educational impact.

On the latter point, SIIA recommends that the Department should follow the practice of other agencies as intended in the Bayh-Dole Act to permit a grantee (and/or their subgrantee or contractor per their agreement) to elect to pursue ownership of the innovation in preference to the government. Specifically, SIIA recommends that the U.S. Department of Education (and the U.S. Federal Government):

- (1) should retain a royalty-free, nonexclusive, irrevocable and nontransferable license for the use directly by the Federal Government, for internal Federal Government purposes only, of the materials created with i3 grant funds;
- (2) should not reproduce, publish, distribute or otherwise facilitate use of such materials to the public or any non-Federal employee;
- (3) should allow grantees and their contractors (including through any contract or other agreement) to determine the best path for wide dissemination of the material or other innovation, including models that addresses long-term sustainability including ongoing dissemination, improvements,

- servicing and user support;
- (4) should require i3 grant applicants to more explicitly describe their plan for such long-term sustainability and dissemination; and
 - (5) should only act on its rights for use of the material for distribution in cases where the grant recipients have failed to make a reasonable effort to distribute the material available to the public, either commercially or non-commercially.

With regard to the former point above regarding clarity, SIIA recommends that the Department make clear that any policies regarding Federal rights or license to copyrighted materials developed with i3 grant funds applies only to those created entirely with such funds, and not with materials revised or implemented with such funds. For example, SIIA recommends that if an existing software application is revised with i3 grant funds, the Federal Government should not have license to that software. However, SIIA does acknowledge the right for Federal license, as described above, of any supplemental materials that exist independent of that application, even if developed to operate on, or support use of, that application. SIIA recommends further that any such Federal right or license apply only to Development grants, and not to Validation or Scale Up grants, since the latter are not intended to create new innovations but to evaluate and implement existing innovations to which the Federal Government should have no right of use.

In all cases cited above, SIIA references software applications, instructional materials, and other resources that are themselves the innovation intended to provide direct educational value to students and educators. SIIA differentiates these resources from evaluation research resources, and supports the Federal government's rights to obtain, reproduce, publish or otherwise use the data and other research resources arising from evaluation research produced with i3 grant funds regarding the impact of those innovations.

6. Reliable Peer Review

Finally, SIIA shares the concern that i3 peer reviewers were not consistent in their scoring of i3 grant applications, including cases where peer reviewers cited application shortcomings that were either not identified in the final rules and selection criteria, or in some cases seemed to conflict with the rules and criteria.

SIIA recommends that the Department institute additional training, checks, audits and other systems to ensure more consistency among peer reviewers.

Examples of 2010 peer review judgments of concern include the following:

- **Quality of the Project Evaluation.** One grant proposal apparently lost points for use of the outcome measure of state assessment scores. The peer reviewer cited the need for multiple measures, as well as concern for use of this particular measure. However, i3 Selection Criteria for the Strength of Research, Significance of Effect, and Magnitude of Effect uses "or" and not "and" in listing a number of outcome measure choices, and does not state that multiple measures should be used. Further, the Selection Criteria for Quality of the Project Evaluation does not reference outcome measures or establish any specific related grant evaluation criteria, instead focusing primarily on research design. Finally, due in part to federal accountability requirements, state and local education decision makers look primarily to state assessment scores as the primary measure of effectiveness, but the peer review lacked recognition of this practical reality.
- **Strategy and Capacity to Bring to Scale.** One grant proposal apparently lost points, because its tool-deployment and training model contrasted with traditional labor intensive practitioner

placement and training educational models. This grant centered around use of learning software. As such, a significant share of grant budget was for software licensing and related costs. This also appeared to impact the evaluation review. Peer reviewers cited the relatively low share of budget for evaluation, but they failed to recognize the extent to which data can be gathered automatically, at lower cost through student use of the software. Similarly, the peer reviewers seemed to imply concern with scale, failing to recognize that software has relatively inexpensive direct recurring costs, and is inherently and infinitely scalable (recognizing the challenges of implementation fidelity) to a degree not possible with practices that are solely human-reliant.

We appreciate the opportunity to comment on this important initiative. Please do not hesitate to contact me with any questions at marks@siia.net or 202-789-4444.

Sincerely,

A handwritten signature in black ink, reading "Mark Schneiderman". The signature is fluid and cursive, with the first name "Mark" and last name "Schneiderman" clearly legible.

Mark Schneiderman
Senior Director, Education Policy