DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AB01

[Docket ID ED–2008–OESE–0003]

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing programs administered under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to clarify and strengthen current Title I regulations in the areas of assessment, accountability, public school choice, and supplemental educational services.

DATES: We must receive your comments on or before June 23, 2008.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Zollie Stevenson, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, Washington, DC 20202–6132.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: Zollie Stevenson, Jr. at 202–260–1824. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov.* You may also inspect the comments, in person, in room 3W202, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The No Child Left Behind Act of 2001 (NCLB), which amended and reauthorized the ESEA, fundamentally changed the way States and local school districts help ensure that all students meet grade-level expectations or better. The law's core principles, particularly in Title I, guide the nation's conversation on education: annual assessments, publicly reported data, assistance for students and schools that fall behind, and accountability for results. NCLB's focus on accountability means that all States are now collecting better information to help schools, educators, policymakers, and parents make the best decisions for students. The Federal government has supported NCLB's implementation with significant resources: $165 billion in funding for NCLB from 2002 to 2008, including an increase of 40 percent in current dollars since 2001. This funding increase was accompanied by a philosophical change—that education is not just about how much we're spending, but about how well we're serving students.

The 2007–2008 school year is the sixth full school year since the passage of NCLB. Throughout these six years, we carefully monitored the law's implementation. We gained valuable information from States, districts, and schools about how implementation of the law's requirements could be improved to ensure that all students reach proficiency in reading/language arts and mathematics by the 2013–2014 school year. For example, in the first several years following the passage of NCLB, we received frequent requests from States to provide additional flexibility to measure the achievement of students with disabilities and students with limited English proficiency (LEP) for purposes of adequate yearly progress (AYP) determinations. In response to these requests, the Department promulgated regulations to permit States to include in their AYP determinations the proficient and advanced scores of students with disabilities assessed based on alternate and modified academic achievement standards, as well as regulations that provide flexibility in the assessment of, and accountability for, recently arrived and former LEP students.

During this time, States developed more sophisticated State data systems that now permit more accurate calculations of high school graduation rates, as well as the measurement of individual student academic growth from one year to the next. Higher-quality State accountability and assessment systems are in place thanks to the rigorous standards established under NCLB, the assessment and accountability peer review process, and most importantly, the hard work of the States.

With these advancements, we believe that it is time to further amend and update our regulations to address certain key areas. Accordingly, these proposed regulations build on the

advancements of State accountability and assessment systems, while incorporating key feedback from the field into an even clearer vision of what it takes to educate each and every one of our Nation's schoolchildren.

We want to ensure that these regulations are as effective as possible in advancing the key principles of NCLB and, therefore, want to provide the opportunity for as much public input on the proposed regulations as possible. The public will have 60 days to comment on these proposed regulations. We also will provide opportunities for public input during regional public meetings; the dates, times, and locations of these meetings will be announced in a separate notice in the **Federal Register**.

These proposed regulations would clarify and strengthen current regulations in the areas of assessment, accountability, supplemental educational services (SES), and public school choice. Specifically, the proposed regulations address the following key areas:

- Assessing higher-order thinking skills through multiple measures.
- Increasing subgroup accountability.
- Ensuring that States and local educational agencies (LEAs) include State data from the National Assessment of Educational Progress (NAEP) on State and local report cards.
- Establishing a uniform and accurate method that States must use to calculate high school graduation rates and setting high school graduation rate goals for AYP purposes.
- Including disaggregated graduation rates in AYP calculations.
- Permitting the inclusion of measures of individual student academic growth in a State's definition of AYP.
- Creating a National Technical Advisory Council to advise the Secretary on complex issues related to State assessment and accountability systems.
- Identifying schools and LEAs for improvement.
- Ensuring that parents receive the information they need to exercise their public school choice and SES options.
- Providing information to the public about participation in SES and public school choice.
- Strengthening the requirements for schools in restructuring.
- Requiring States to be more transparent about how they monitor LEAs' implementation of SES and strengthening the evidence that States must consider when approving and monitoring SES providers.
- Using SES and school choice funds for parent outreach.
- Maximizing use of funds for public school choice-related transportation and SES.

Issuing regulations that strengthen Title I implementation in these areas will help bring about higher-quality assessments and stronger accountability for results, as well as provide parents with the information they need to make informed decisions about public school choice and SES. We look forward to receiving your comments on these proposed regulations to ensure that they accomplish our intended objectives.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Section 200.2—State Responsibilities for Assessment

Statute: Section 1111(b)(3)(C)(vi) of the ESEA states that assessments must involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding.

Current Regulations: Section 200.2(b)(7) of the Title I regulations essentially repeats the statutory language.

Proposed Regulations: Proposed § 200.2(b)(7)(i) and (ii) would clarify that measures of student academic achievement may include multiple types of questions that range in complexity and reflect the cognitive concepts and processes in the State content standards within a single assessment, as well as multiple assessments within a subject area.

Reasons: There has been some misunderstanding among parents, teachers, and administrators that student achievement, for purposes of accountability determinations under Title I, must be based on a single assessment. This is not true; in fact, the law requires that a State's assessment include ''multiple measures.'' The proposed language would clarify what is meant by this concept, which is included in the law to ensure that a State's assessment system measure the full range of cognitive complexity in the State's academic content standards. Assessments, therefore, should include items that measure both higher order thinking skills (*e.g.*, reasoning, synthesis, analysis) as well as knowledge and recall items to assess the depth and breadth of mastery of a particular content domain. In so doing, States may use a single test or several tests, or rely on one item format or several item formats (such as multiple choice or constructed response).

Specifically, the proposed regulatory changes would clarify that, to meet the requirement to use multiple measures, a State may also choose to develop an assessment that relies on a combination of question formats, so long as the assessment reflects the degree of complexity of the cognitive concepts and processes in the State content standards. Multiple assessments to measure student achievement in a subject area may also be used in order to assess mastery of the breadth of a particular content domain. For example, some States use reading and writing assessments to calculate AYP in reading/language arts; other States use algebra and probability assessments to calculate AYP for mathematics.

These clarifications are necessary to ensure that States clearly understand that their assessments may include single or multiple item formats, and that they may use multiple assessments to measure a specific content domain; they do not impose new requirements or require States to change their current assessment systems.

Section 200.7—Disaggregation of Data

Statute: Section 1111(b)(2)(C)(v) of the ESEA requires a State to define AYP so that its annual measurable objectives apply to all students as well as to specific subgroups of students —that is, economically disadvantaged students; students from major racial and ethnic groups; students with disabilities; and LEP students. Section 1111(b)(2)(I) of the ESEA makes clear that, for a school or LEA to make AYP, all students as well as each subgroup of students must meet or exceed the State's annual measurable objectives. Sections 1111(h)(1)(C) and 1111(h)(2) require that States and LEAs report on their report cards academic achievement data disaggregated by these same subgroups. Sections 1111(b)(2)(C) and 1111(h)(1)(C) of the ESEA, however, do not require a State to use such disaggregated data for determining AYP or reporting achievement data by subgroup if the number of students in a subgroup is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student.

Current Regulations: Section 200.7(a) prohibits a State from using disaggregated data for one or more subgroups to report achievement results or to identify schools in need of improvement, corrective action, or

restructuring if the number of students in a subgroup is insufficient to yield statistically reliable information. Accordingly, § 200.7(a)(2) requires a State, using sound statistical methods, to determine and justify in its State Plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used (*e.g.*, for determining AYP and for reporting subgroup achievement on State and LEA report cards).

Proposed Regulations: In determining a minimum subgroup size, a State must balance achieving statistical reliability with maximizing inclusion of subgroups for accountability purposes (consistent with the statutory requirements to hold schools and LEAs accountable for the achievement of specific subgroups). Thus, proposed § 200.7(a)(2)(i)(B) would require a State, as it considers statistical reliability in setting its minimum subgroup size, to ensure, to the maximum extent practicable, that all student subgroups are included, particularly at the school level, for purposes of making accountability decisions.

Proposed § 200.7(a)(2)(ii) would require each State to revise its Consolidated State Application Accountability Workbook (which is part of the State Plan and is hereafter referred to as the Accountability Workbook) to include (1) an explanation of how the State's minimum subgroup size meets proposed § 200.7(a)(2)(i); (2) an explanation of how other components of the State's AYP definition, in addition to the State's minimum subgroup size, interact to affect the statistical reliability of the data and to ensure maximum inclusion of all students and student subgroups; and (3) information on the number and percentage of students and student subgroups excluded from school-level accountability determinations.

Proposed § 200.7(a)(2)(iii) would require each State to submit a revised Accountability Workbook that incorporates the information in proposed § 200.7(a)(2)(ii) for technical assistance and peer review no later than six months after the effective date of the regulation.

Reasons: One of the most significant aspects of NCLB is its focus on holding schools and LEAs accountable for the achievement of specific student subgroups. Prior to NCLB, the overall achievement of students in a school often masked the low achievement of certain subgroups of students. To ensure that schools and LEAs are held accountable for the achievement of *all* their students, NCLB specifically requires that specified student subgroups must meet a State's annual measurable objectives and other academic indicators in order for a school or LEA to make AYP. NCLB also requires that States and LEAs report to the public on the achievement of their student subgroups.

These disaggregation requirements are tempered by the need to ensure statistical reliability and privacy. Thus, sections 1111(b)(2)(C)(v) and 1111(h)(1)(C) of the ESEA and current § 200.7 do not require accountability determinations or reporting by student subgroup if the size of the subgroup is too small to yield statistically reliable results or would reveal personally identifiable information about individual students. Current § 200.7(a)(1), therefore, requires a State to set a minimum subgroup size. A minimum subgroup size that is too small may yield unreliable data or reveal the identity of individual students. A minimum subgroup size, however, should be no larger than necessary to ensure the protection of privacy for individuals and to allow for statistically reliable results of the aggregate performance of the students who make up a subgroup. Moreover, the minimum subgroup size should be small enough to ensure the maximum inclusion of student subgroups in accountability decisions, consistent with the statutory requirements to disaggregate data.

Some have argued that the heterogeneous nature of student populations requires a relatively large minimum subgroup size in order to reflect accurately the achievement of students in AYP determinations. We believe, however, that in many cases minimum subgroup sizes are larger than is necessary to ensure statistically reliable information; the result is that a large number of subgroups (*e.g.*, low-income students, students in some racial or ethnic subgroups, LEP students, and students with disabilities) are excluded from school-level accountability determinations.

Some estimates indicate that large minimum subgroup sizes result in nearly 2 million students (or about 1 in every 14 test scores) not being counted in NCLB subgroup accountability determinations at the school level and minority students are as much as seven times more likely than white students to have their scores excluded from school-level AYP subgroup calculations.[1] Under the current regulations and statute, in order for a school to be held accountable for a student subgroup, the number of students in that subgroup must exceed the State-established minimum subgroup size. Logically, the larger a State's minimum subgroup size, the less likely students will constitute an accountability subgroup at the school level and, thus, the school would not be held accountable for the performance of that subgroup.

Setting minimum subgroup sizes that are statistically reliable has been a challenge for States. This challenge may stem from the fact that the concept of ''statistical reliability'' normally refers to the adequacy of a sample size to produce results with enough precision to meet the purpose of a study or report. The larger the sample drawn, the smaller the sampling error, variability, and confidence intervals around the estimate, and the higher the resulting precision of the estimate. However, under NCLB, all students in the tested grades are required to be assessed. Therefore, in the NCLB context, statistical reliability is obtained through the requirement to test the population of students while addressing concerns about instability of scores in small subgroups by using a minimum subgroup size. The use of a minimum subgroup size is not as much a ''sampling'' issue, as it is a protection to minimize the instability of scores that may occur when there are a small number of scores in a population. A minimum subgroup size mitigates the instability of scores and reduces the likelihood that an extreme score (high or low) will positively or negatively affect the overall score for the subgroup.

There have been a number of developments in State assessment and accountability systems since NCLB was enacted and Accountability Workbooks were first approved. These developments have provided States the opportunity to be more precise, consistent, and transparent in the application of statistical reliability concepts under NCLB. Specifically, when NCLB was enacted, most States did not yet assess all students in grades three through eight and once in the high school grade span as required under NCLB. Now, virtually all students in all required grades are assessed; therefore, test scores generally reflect actual proficiency levels of schools rather than estimates based on the scores of students in one grade. States also have more options to accurately assess student learning, particularly for students with disabilities and LEP students. In addition, States have made tremendous advances in their abilities to gather and analyze student

[1] Bass, F., Ziegler Dizon, N., & Feller, B. (2006, April 18). States Omit Minorities' School Scores. *Associated Press.*

achievement data. These advances help States strike a more optimal balance between reasonable subgroup accountability and inclusion of the maximum number of students in school-level AYP determinations.

For these reasons, the proposed regulations would require a State to ensure that its minimum subgroup size is large enough to produce statistically reliable information for all purposes for which disaggregated data are used (*e.g.*, the use of data for reporting and making accountability decisions) yet limited to the smallest number possible in order to maximize the inclusion of student subgroups in accountability decisions.

Furthermore, while the proposed regulations would not require a specific minimum subgroup size, they would require each State to revise its Accountability Workbook to explain how the State's current or proposed minimum subgroup size meets § 200.7(a)(2)(i). A State would also be required to explain how other elements of the State's AYP definition (such as the use of confidence intervals, performance indexes, and uniform averaging; the State's definition of full academic year), in concert with the State's minimum subgroup size, affect the statistical reliability of accountability determinations as well as impact the inclusion of all students and student subgroups in those determinations. States that propose large minimum subgroup sizes and include other components in their AYP definitions that result in the exclusion of large numbers of students or student subgroups would be subject to close scrutiny.

The proposed regulations would also require each State to include in its Accountability Workbook data on the number and percentage of students and subgroups that are excluded from school-level accountability decisions as a result of the various components of the State's AYP definition. Making this information available through a State's Accountability Workbook should enable the public to gain a better understanding of how schools are being held accountable for the performance of their students and student subgroups.

Finally, we are proposing that each State submit its Accountability Workbook, incorporating the information required by the proposed regulations, for technical assistance and peer review. We believe this would be an appropriate time to again have outside experts examine all the factors that bear on the statistical reliability of and inclusion of students in States' accountability systems. This will help the Department determine whether those systems are designed to produce reliable accountability determinations that maximize the inclusion of students and student subgroups, particularly in school-level accountability determinations. The Department will work with the National Technical Advisory Council that would be established under the proposed regulations to develop appropriate guidelines for the peer review.

Section 200.11—Participation in NAEP

Statute: Section 1111(c)(2) of the ESEA requires States to participate in the National Assessment of Educational Progress (NAEP) in reading and mathematics for the fourth and eighth grades as a condition of receiving Title I funds, and section 1112(b)(1)(F) of the ESEA requires districts, if selected, to participate in the NAEP. The general authorization for the NAEP requirements is outlined in section 411 of the National Education Statistics Act of 1994 (20 U.S.C. 9010).

Current Regulations: Section 200.11 requires each State that receives funds under Title I, part A of the ESEA to participate in biennial State NAEP academic assessments of fourth and eighth grade reading and mathematics. It also requires an LEA that receives these funds to participate, if selected, in the State NAEP assessments.

Proposed Regulations: Proposed § 200.11(c) would require a State to report the most recent available academic achievement results from NAEP reading and mathematics assessments on the same public report card as it reports the results of its State assessments. It also would require an LEA to report the State NAEP assessment data on its report card.

Reasons: The NAEP is the only nationally representative and continuing assessment of what America's students know and can do in various grades and subject areas and, therefore, is an important source of information about student achievement. We propose to require States and LEAs to include information on NAEP scores on the same report cards that provide data on the performance of students on State assessments to ensure that NAEP data are easily accessible and available to parents and the public and to provide them with a tool to compare how students in a State are performing on the NAEP with student performance on State assessments.

The Department recognizes that simple comparisons of student performance on the NAEP and State assessments cannot be made without some understanding of the key differences between the two assessments. For example, the NAEP is not aligned with State academic content and achievement standards and, therefore, does not necessarily reflect the curriculum and instruction to which students are exposed in the classroom. Therefore, the Department encourages States to provide information to parents on how to interpret the NAEP and State data. When the NAEP assessment information is presented in the appropriate context, the Department believes information on how students in a State are performing on State assessments compared to their performance on the NAEP will provide for greater transparency and give parents another tool to assess the education system in their State.

Section 200.19—Other Academic Indicators

Statute: Section 1111(b)(2)(C) of the ESEA outlines the specific components that must be included in a State's definition of AYP. Subparagraph (vi) of that section specifically provides that a State's definition of AYP must include, in accordance with section 1111(b)(2)(D) of the ESEA, other academic indicators, and that the other academic indicator for high schools must be the graduation rate. (Graduation rate is generally defined in this section as the percentage of students who graduate from secondary school with a regular diploma in the standard number of years.) Section 1111(b)(2)(I)(i) of the ESEA further provides that, if any group of students identified in section 1111(b)(2)(C)(v) [2] does not meet the annual measurable objectives in any particular year, the school, under what is commonly known as the ''safe harbor'' provision, is still considered to have made AYP for that year if the percentage of students in that group who did not meet or exceed the proficient level of academic achievement on the State assessment for that year decreased by 10 percent from the previous year, and that group made progress on one or more of the other academic indicators.

Current Regulations: Section 200.19(a)(1) of the regulations reflects the statutory requirements and requires States to use graduation rate as the other academic indicator for determining AYP for high schools. Under the current regulations, States have some flexibility in calculating graduation rates. States also have flexibility in setting

[2] These groups are: (1) All public elementary and secondary school students, (2) economically disadvantaged students, (3) students from major racial and ethnic groups, (4) students with disabilities, and (5) students with limited English proficiency.

graduation rate goals or determining the improvement in graduation rates needed for a school or district to make AYP. Graduation rate is defined in the regulations as: (1) the percentage of students, measured from the beginning of high school, who graduate from high school with a regular diploma (not including an alternative degree, such as a General Educational Development (GED) credential or another type of certificate that is not fully aligned with the State's academic standards) in the standard number of years; or (2) another definition, developed by the State and approved by the Secretary in the State Plan, that more accurately measures the rate of student graduation from high school with a regular diploma. In defining graduation rate, the State must avoid counting a dropout as a transfer.

Section 200.19(d)(1) states that a State may, but is not required to, hold schools and LEAs accountable for achieving higher goals on its other academic indicators, including, with respect to high schools, the graduation rate, over the course of the timeline established by the State under § 200.15. Further, § 200.20 provides that, in order for a school or LEA to make AYP, each subgroup of students must meet or exceed the State's annual measurable objectives and the State's goals for the other academic indicator.

Section 200.19(d)(2)(i) requires a State to disaggregate its other academic indicators by subgroup for purposes of reporting under section 1111(h) of the ESEA and for using the ''safe harbor'' provision to determine AYP. Section 200.19(d)(2)(ii) states that a State need not disaggregate those indicators for determining AYP except as provided for in section 1111(b)(2)(C)(vii) (which permits States to establish any other academic indicators in addition to those required under section 1111(b)(2)(C)(vi)).

Proposed Regulations: We propose several changes to the regulations regarding the use of high school graduation rate as the other academic indicator for determining AYP for high schools.

Definition of graduation rate. Consistent with the definition adopted by the National Governors Association (NGA), and agreed to by all 50 governors in 2005, proposed § 200.19(a)(1) would require States to use a uniform and accurate method of calculating graduation rates by defining graduation rate as the number of students who graduate in the standard number of years with a regular high school diploma divided by the number of students who form the ''adjusted cohort'' for that graduating class. The ''adjusted cohort'' is the group of students who entered the 9th grade four years earlier, and any students who transferred into or entered the cohort in grades 9 through 12, minus any students removed from the cohort. To remove a student from the cohort, a school or LEA would need to confirm that the student either enrolled in another educational program that culminates in the award of a regular high school diploma or is deceased. A student who is retained in grade, enrolls in a GED program, or leaves school for any other reason would remain in the adjusted cohort for the purposes of calculating the graduation rate.

Proposed § 200.19(a)(1)(i)(C)(2) would permit a State to propose, for approval by the Secretary, an alternate definition of ''standard number of years'' that would apply to limited categories of students who, under certain conditions, may take longer to graduate (as is the case, for example, for a small number of students with disabilities or students in ''early college high schools'' who earn an associate's degree along with a high school diploma).

A State that does not have in effect a system to accurately track transfers for calculation of the graduation rate defined in proposed § 200.19(a)(1)(i) would be required to use the averaged freshman graduation rate (AFGR) on a transitional basis. The AFGR would be defined as the number of high school students who graduate in the standard number of years with a regular high school diploma divided by the number of students in the incoming freshman class four years earlier, which is estimated by averaging the enrollment of that freshman class with the enrollment of that class in eighth grade the prior year and in tenth grade the subsequent year. For any school or district that does not have an eighth grade, the AFGR would be estimated by averaging the enrollment of the freshman class with the enrollment of the tenth grade class in the subsequent year. The proposed regulations would not permit States to use the AFGR to calculate graduation rates after 2011–2012; after 2011–2012, all States would have to calculate graduation rates under proposed § 200.19(a)(1).

Graduation rate goals and continuous and substantial improvement measures. Proposed § 200.19(d)(1) would provide two ways for States to determine whether their schools and LEAs meet the graduation rate component of AYP. Beginning in the 2008–2009 school year, in order for a high school or LEA to be considered to have met the other academic indicator for purposes of determining AYP, the school or LEA must either (1) meet a graduation rate goal, established by the State and approved by the Secretary that represents the rate the State expects all high schools to achieve; or (2) demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding that goal, as defined by the State and approved by the Secretary.

Disaggregation of graduation rates. Proposed § 200.19(e)(1) would require each State, no later than the 2012–2013 school year, to calculate the graduation rate at the school, LEA, and State levels in the aggregate and disaggregated by the subgroups in § 200.13(b)(7)(ii) for reporting under section 1111(h) of the ESEA and for determining AYP. Proposed § 200.19(e)(2)(i) and (ii) would require a State, prior to the 2012–2013 school year, to disaggregate the graduation rate data at the school, LEA, and State levels for reporting purposes and for determining ''safe harbor'' and at the LEA and State levels for determining AYP. Table 1 shows the proposed disaggregation requirements for determining AYP and for reporting AYP determinations.

TABLE 1.—GRADUATION RATE DISAGGREGATION REQUIREMENTS

	AFGR beginning school year 2008–2009		NGA no later than school year 2012–2013	
	Determining AYP	Reporting	Determining AYP	Reporting
School	No (except when determining ''safe harbor'').	Yes	Yes	Yes.
LEA	Yes	Yes	Yes	Yes.
State	Yes	Yes	Yes	Yes.

Reasons: There is an urgent need to improve America's high schools and ensure that all students graduate from high school ready for postsecondary instruction or the workforce. A uniform and accurate method of calculating graduation rates is needed to raise expectations and to hold schools, districts, and States accountable for increasing the number of students who graduate on time with a regular high school diploma. In addition, a uniform and accurate method of calculating high school graduation rates will improve our understanding of the scope and characteristics of those students dropping out of school or taking longer to graduate.

Numerous reports and statistics from the U.S. Department of Labor (DOL) indicate the growing importance of a high school diploma. In its publication, *America's Dynamic Workforce,* DOL reported that 90 percent of the fastest-growing jobs require some form of postsecondary education.[3] There also are increasing gaps in the unemployment rate and earnings between college graduates and high school dropouts. In 2006, the unemployment rate for high school dropouts age 25 and older was over three times the rate for college graduates (6.8 percent compared to 2.0 percent, respectively) and over 1.5 times the rate of individuals who had only a high school diploma (6.8 percent compared to 4.3 percent, respectively). Moreover, what DOL refers to as the ''education premium'' is increasing—in 2006, college graduates with a bachelor's or higher degree had median weekly earnings nearly 2.5 times greater than the typical high school dropout. Furthermore, college graduates have experienced growth in real median weekly earnings since 1979, while high school dropouts have seen their real median weekly earnings decline by about 20 percent.[4]

These statistics demonstrate the critical importance of having a high school diploma. Unfortunately, only about half of African American and Hispanic students graduate from high school on time with a regular high school diploma.[5] Additionally, 15 percent of high schools in the country are producing over half of our dropouts—and yet nearly forty percent of these schools are making AYP because of inaccurate graduation rate calculations and a lack of accountability for all students.[6]

Because the current regulations allow States latitude in determining how graduation rates are measured, the accuracy of State-calculated graduation rates varies considerably. Many States use some form of a ''completer rate'' (multiplication of dropout rates in each academic year) as their graduation rate. This rate has been shown to overestimate significantly high school graduation rates. The National Center for Education Statistics (NCES) calculated the AFGR for all States and compared the State-reported graduation rates to the AFGR. This analysis, published in the National Assessment of Title I Interim Report, shows that in some cases there is nearly a 30-point difference between a State's reported graduation rate and its AFGR.[7]

The requirements States have established for determining whether a high school makes AYP with respect to its graduation rate also vary. One State, for example, has set its goal at 50 percent; another has set its goal at 95 percent. In addition, more than one-half of States accept any improvement or some established minimal improvement (*e.g.*, 0.1 percent from the previous year) in their high school graduation rate to count as making AYP. In several States, a school can graduate less than half of its students, year after year, and still make AYP by graduating one more student with a regular high school diploma than it did in the previous year.

The proposed regulations would revise current regulations to require the use of a uniform and accurate method of calculating high school graduation rates and would require schools and districts to either meet a State-established goal that has been approved by the Secretary or demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding that goal. These changes are intended to increase the transparency and accuracy of graduation rates and strengthen accountability for the achievement of high school students. Following is the rationale for each of these changes.

Definition of graduation rate. A uniform and accurate method of calculating high school graduation rates is necessary in order to provide parents and the public with important information about the success of a school, district, and State in graduating students in the standard number of years and to ensure that AYP determinations are based on valid graduation rate calculations.

There is now a broad consensus about how to define the graduation rate. In August 2006, NCES released a report synthesizing the recommendations of a panel of experts on graduation rate calculations.[8] The panel recommended that the standard graduation rate measure on-time completion of a regular diploma within four years and not include GED recipients or students without documentation of transferring to another educational program that terminates in the award of a regular high school diploma (*e.g.*, documented through receipt of a transcript). Additionally, the NGA Task Force on High School Graduation Rate Data had as its lead recommendation that all States immediately adopt and begin taking steps to implement a standard four-year, adjusted cohort graduation rate, consistent with that proposed by the NCES panel (the ''NGA rate''), which 50 governors agreed to adopt in 2005.[9] The proposed regulations offer a uniform and accurate method of calculating graduation rates that reflects this broad consensus in the field.

To calculate the NGA rate, States need a system of documenting transfers as well as four years of data, or the equivalent of one full cohort. For States that do not yet have the ability to accurately track student transfers, NCES recommended using the AFGR as an *interim* measure. The AFGR estimates the effect of transfers into and out of a cohort of students and can be calculated with data currently available to States. It has been shown to be a reliable, accurate estimate of the high school graduation rate.

The proposed regulations would provide time for States to transition to using the new definition of graduation rate. This transition period would allow all States sufficient time to develop a system for documenting transfers for one full cohort and subsequently to calculate the NGA rate. By 2012–2013, however, all States would be required to

[3] U.S. Department of Labor. (2007). *America's Dynamic Workforce.* Washington, DC: Author. Available at: *http://www.dol.gov/asp/media/reports/workforce2007/index.htm.*

[4] *Id.*

[5] Belfanz, R., Legters, N., T.C. & Weber, L.M. (2007). Are NCLB's Measures, Incentives, and Improvement Strategies the Right One's for the Nation's Low-Performing High Schools? *American Educational Research Journal, 44*(3), 559–593.

[6] *Id.*

[7] Stullich, S., Eisner, E., McCrary, J., & Roney, C. (2006). *National Assessment of Title I Interim Report to Congress: Volume I: Implementation of Title I.* Washington, DC: U.S. Department of Education, Institute of Education Sciences. Available at: *http://www.ed.gov/rschstat/eval/disady/titlelinterimreport/voll.pdf.*

[8] Seastrom, M., Chapman, C., Stillwell, R., McGrath, D., Peltola, P., Dinkes, R., & Xu, Z. (2006). *User's guide to Computing High School Graduation Rates.* Washington, DC: U.S. Department of Education, National Center for Education Statistics.

[9] National Governors Association. (2006). *Graduation Counts: A Report of the National Governors Association Task Force on High School Graduation Rate Data.* Washington, DC: Author.

use the more rigorous definition of graduation rate in proposed § 200.19(a)(1).

Graduation rate goals and continuous and substantial improvement measures. While some States only allow for schools to make AYP if a State-established goal is met, most States allow any improvement from the previous year or some established minimal improvement (ranging from 0.1 percent to 2.0 percent) for a school to demonstrate it has met AYP; one State simply requires schools to maintain the prior year's rate. Furthermore, many States have established low graduation rate goals (*e.g.*, 50 percent) that are considered the threshold for AYP determinations—a school or LEA must meet that threshold in order to be considered to have made AYP and no improvement above that threshold is required. These methods of determining whether a school or LEA meets the graduation rate component of AYP represent exceptionally low expectations and demonstrate the need for States to establish graduation rate goals that are more rigorous. Accordingly, § 200.19(d) would require a State to establish a graduation rate goal that it expects all high schools to eventually achieve and to establish requirements for demonstrating continuous and substantial improvement toward meeting or exceeding that goal, in order to make AYP. Given the ever-increasing importance of a high school diploma, allowing schools and LEAs with unacceptably low rates of graduation to make AYP by simply maintaining the same low rate or minimally increasing the number of graduates from the previous year does not provide for appropriate and meaningful accountability.

Disaggregation of graduation rates. When the current regulations were written in 2002, the Department believed that permitting States to use aggregate graduation rate data for the purpose of determining AYP while requiring disaggregation for reporting would be sufficient to ensure school accountability for the achievement of all groups of students and would avoid overburdening State accountability systems. Six years later, we now know that simply reporting disaggregated graduation rate data is not sufficient to ensure that graduation rates improve for all students. As previously highlighted, too many schools are graduating too few students and not being held accountable for improving their performance in this important area. Moreover, it is evident that there are significant disparities in high school outcomes. For example, data provided by NCES show significant gaps in subgroup AFGR graduation rates. Data from the 2004–2005 school year show the average AFGR for white students is 80.4 percent, whereas the average AFGR for Hispanic, black, and Native American/Alaska Native students is 64.2 percent, 60.3 percent, and 67.2 percent, respectively.[10] With these figures, it is clear that disaggregated graduation rate data should be used for purposes of determining whether a high school or LEA makes AYP. Similar to the importance of disaggregating assessment results to ensure that high performance by a particular group of students does not mask low performance by another group of students, schools need to be held accountable for the differences in high school graduation rates among various groups of students.

For these reasons, the proposed regulations would require, by the 2012–2013 school year, all States to include disaggregated graduation rates in State-, district-, and school-level AYP decisions. The Department, however, recognizes that, while disaggregated AFGR results are valid at the State and district levels, there is less confidence in the validity of disaggregated AFGR results at the school level. Therefore, beginning with the effective date of this regulation, States would be required to use disaggregated results for reporting and determining AYP at the State and district levels, but would only be required to use school-level disaggregated results for reporting purposes and determining AYP under the ''safe harbor'' provision. Beginning in 2012–2013, when all States would have to use the NGA graduation rate, disaggregated results would also be required in school-level AYP determinations.

Section 200.20—Making Adequate Yearly Progress

Statute: Section 1111(b)(2) of the ESEA sets out the requirements for calculating AYP, which is a measure of the percentage of students who are proficient in a school, LEA, and State. The AYP calculation method commonly referred to as a ''status model'' compares the achievement of one cohort of students against the test scores of the students in the previous year's class. Although Title I allows AYP to be determined using student progress with the ''safe harbor'' provision, the proficiency gains measured in that calculation do not look at individual student growth—it is still a cohort comparison. Currently, nine States are participating in a ''growth model'' pilot and are permitted to report their accountability results using measures of individual student growth that have been approved by the Department. North Carolina and Tennessee first used measures of individual student growth for the 2005–2006 school year; Alaska, Arizona, Arkansas, Delaware, Florida, and Iowa reported growth scores for the first time for the 2006–2007 school year.[11]

Current Regulations: Section 200.20 implements the statutory requirements for determining AYP.

Proposed Regulations: Proposed § 200.20(h) would establish the criteria that a State must meet in order for the Secretary to permit a State, under the waiver authority of section 9401 of the ESEA, to establish and implement policies for incorporating individual student academic progress into the State's definition of AYP. A State that desires to incorporate individual student academic growth into its definition of AYP would be required to—

(a) Set annual growth targets that—

(1) Lead to all students, by school year 2013–2014, meeting or exceeding the State's proficient level of academic achievement on the State assessments under § 200.2;

(2) Are based on meeting the State's proficient level of academic achievement on the State's assessments under § 200.2 and are not based on individual student background characteristics; and

(3) Measure student achievement separately in mathematics and reading/language arts;

(b) Ensure that all students who are tested using the State's assessments under § 200.2 are included in the State's assessment and accountability systems;

(c) Hold all schools and LEAs accountable for the performance of all students and the student subgroups described in § 200.13(b)(7)(ii);

(d) Be based on State assessments that—

(1) Produce comparable results from grade to grade and from year to year in mathematics and reading/language arts;

(2) Have been in use by the State for more than one year; and

(3) Have received full approval from the Secretary before the State determines AYP based on student academic growth;

[10] National Center for Education Statistics. (2008). Averaged Freshman Graduation Rates for Public School Students, 2004–05. Unpublished data.

[11] Ohio has received conditional approval, but has not yet implemented its proposal due to delayed State legislative changes necessary for implementation.

(e) Track student progress through a State-developed data system;

(f) Include, as separate factors in determining whether schools are making AYP for a particular year—

(1) The rate of student participation in assessments; and

(2) Other academic indicators as described in § 200.19; and

(g) Describe how the proposed annual growth targets fit into a State's accountability system in a manner that ensures that the system is coherent and that incorporating individual student academic growth into a State's definition of AYP does not dilute accountability.

With the additions proposed in these regulations, a State could permit its LEAs and schools to make AYP by meeting (1) the State's proficiency targets, (2) growth targets, or (3) the ''safe harbor'' provision.

A State's proposal to incorporate student academic growth in the State's definition of AYP will be peer reviewed under section 1111(e)(2) of the ESEA.

Reasons: There is general consensus among teachers, administrators, researchers, and advocates that States should be permitted to include measures of individual student academic progress (that is, to use what is often described as a ''growth model'') when determining whether a school or district is making AYP. When NCLB was signed into law in 2002, few States had the data capacity to calculate individual student academic progress. With all States now testing annually in grades 3 through 8 and once in high school coupled with improved data systems in many States, States have a greater capacity to measure individual student academic progress. The Department believes that allowing States to include accurate measures of individual student academic progress in AYP calculations will still hold schools accountable for the achievement of all students to State academic achievement standards, while providing schools and teachers with useful information on how their students are progressing towards grade-level proficiency, which can ultimately lead to better instruction. Under these proposed regulations and section 9401 of the ESEA, therefore, schools and LEAs in States that incorporate individual student academic growth into their definition of AYP would be held accountable for improving individual students' achievement from one school year to the next. We encourage States that decide to incorporate individual student growth into their accountability systems to include in their data systems a teacher identifier to help track student achievement and teacher performance by class assignment. While not a condition of incorporating individual student academic growth into a State's definition of AYP, inclusion of a teacher identifier will create a much richer set of data to guide school improvement efforts.

Section 200.22—National Technical Advisory Council

Statute: Section 1111(e) of the ESEA requires the Secretary to establish a peer review process to assist in the review of State Plans.

Current Regulations: There are no current regulations related to this statutory requirement.

Proposed Regulations: The proposed regulations in § 200.22 would require the establishment of a National Technical Advisory Council (National TAC) to advise the Secretary on key technical issues related to State standards, assessments, and accountability systems that are part of State plans. The National TAC would not replace the peer review panels the Department uses to evaluate State standards, assessments, and accountability systems. Rather, the National TAC would consider complex issues that affect all States, as well as issues that would benefit from discussions with experts in the field. For example, the National TAC could help create guidelines for how States should determine an appropriate minimum subgroup size, taking into consideration other elements of States' AYP definitions, as we have proposed in § 200.7.

Under the proposed regulations, the Secretary would solicit nominations from the public for experts in the fields of assessment design and implementation, and the field of accountability to serve on the National TAC. The proposed regulations provide that, from these nominations, the Secretary would select 10 to 15 National TAC members. The National TAC could meet as a whole or in subcommittees.

Reasons: The Department currently uses experts in the fields of assessment and accountability to review State standards, assessments, and accountability systems. During the course of reviewing State Plans, these experts, as well as States, have raised a number of complex issues (*e.g.*, the appropriate use of confidence intervals and indexes, and the alignment of alternate assessments with alternate academic achievement standards). Advice from a National TAC consisting of experts with knowledge in the fields of educational standards, assessments, accountability systems, statistics, and psychometrics would help the Department address these complex and technical issues. Just as States have established State technical advisory committees to advise them on the development and implementation of their State standards, assessments, and accountability systems, the Department believes that regular access to a group of experts would benefit the Department, States, and, ultimately, students in ensuring that State standards and assessments are of the highest technical quality and that State accountability systems hold schools and districts accountable for the achievement of all students.

Sections 200.32 and 200.50(d)(1)—Identification of Schools and LEAs for Improvement

Statute and Current Regulations: Section 1116(b)(1)(A) of the ESEA and § 200.32(a)(1) require an LEA to identify a school for improvement if it does not make AYP, ''as defined * * * under section 1111(b)(2),'' for two consecutive years. Section 1116(c)(3) of the ESEA and § 200.50(d)(1) contain a similar requirement for identifying LEAs for improvement.

Under section 1111(b)(2)(I) of the ESEA and § 200.20, a school or LEA makes AYP if: (1) All students and each subgroup of students under § 200.13(b)(7)(ii) meet or exceed the State's separate annual measurable objectives (AMOs) for reading/language arts and math, (2) the school or LEA meets or exceeds the State's other academic indicators, and (3) not less than 95 percent of all students and those in each subgroup identified in § 200.13(b)(7)(ii) take the State's assessments. A school or LEA may also make AYP through the ''safe harbor'' provisions described previously in this notice.

Under current policy, the Department permits the identification of schools and LEAs for improvement if the school or LEA did not make AYP because it did not meet the AMO in the same subject or academic indicator for two consecutive years. So, for example, if a school did not make AYP because it did not meet the AMO for math for two consecutive years, the school would be identified for improvement. On the other hand, if a school, in the first year, did not make AYP because it did not meet the AMO in math but met the AMO in reading/language arts, and then, in the second year, did not make AYP because it did not meet the AMO in reading/language arts but met the AMO in math, that school would not be identified for improvement.

The Department, however, does not permit an LEA or a State to limit the identification of schools and LEAs for improvement to only those schools and LEAs that did not make AYP because the same subgroup did not meet the AMO in the same subject or meet the same other academic indicator for two consecutive years. So, for example, if a school, in the first year, did not make AYP because the students with disabilities subgroup did not meet the AMO in math, and then, in the second year, the school did not make AYP because the LEP students subgroup did not meet the AMO in math, the LEA must identify that school for improvement. In this example, identification for improvement is based on not meeting the AMO in the same subject, math, not on whether the same subgroup did not meet the AMO.

Proposed Regulations: We are proposing to codify the Department's current policy in §§ 200.32 and 200.50(d). Proposed § 200.32 would provide that, in identifying a school for improvement, an LEA may base identification on whether the school did not make AYP because it did not meet the AMO in the same subject or meet the same other academic indicator for two consecutive years. The LEA may not, however, limit such identification to those schools that did not make AYP only because they did not meet the AMO in the same subject or meet the same other academic indicator for the same subgroup under § 200.13(b)(7)(ii) for two consecutive years. Comparable changes with respect to the identification of LEAs for improvement would be made in proposed § 200.50(d)(1).

Reasons: We are proposing to codify our current policy in order to establish clear parameters for LEAs and States to use when identifying schools and LEAs for improvement. We believe the current policy and proposed regulatory changes are consistent with section 1111(b)(2)'s emphasis on proficiency in separate subjects and requiring separate participation rates for math and reading/language arts assessments for purposes of determining AYP, as well as the absence of any similar authority for emphasizing subgroups.

Section 1111(b)(2)(E) of the ESEA clearly acknowledges that student achievement in reading and math in a State may start at very different points and, when they do, different trajectories need to be established for each subject toward the goal of 100 percent proficiency by 2013–2014. Similarly, section 1111(b)(2)(G) of the ESEA requires a State to set different AMOs in math and reading. Participation rates, likewise, must be calculated separately because a student could participate in one, both, or neither of the State's mathematics and reading/language arts assessments. Accordingly, it follows that a State may take into consideration in identifying a school or LEA for improvement the fact that the school or LEA did not meet its AMO in the same subject (including the participation rate for that subject) or meet the same other academic indicator for two consecutive years.

There is no similar basis for identifying for improvement a school or LEA only when the same subgroup did not meet the AMO in the same subject or the same other academic indicator for two consecutive years. Although section 1111(b)(2) of the ESEA requires a State to establish separate AMOs for each subject, it requires a State to apply those AMOs to each subgroup in determining whether a school or LEA makes AYP. In addition, section 1111(b)(2)(I)(i) of the ESEA provides that, for a school or LEA to make AYP, ''all students'' and each subgroup must meet or exceed the AMOs. Based on these provisions, the ESEA does not authorize limiting the identification of a school or LEA for improvement to instances when the school or LEA did not make AYP for two consecutive years only because the same subgroup did not meet the AMO for the same subject or the same other academic indicator. Identifying a school or LEA in this manner would be inconsistent with the ESEA's accountability provisions, which require that each subgroup meet the State's AMOs in each subject each year.

Section 200.37—Notice of Identification for Improvement, Corrective Action, or Restructuring

Statute: Section 1116(b)(1)(A) of the ESEA requires LEAs to identify for improvement any Title I school that fails to make AYP for two consecutive years. The identification must occur before the beginning of the school year following the school's failure to make AYP (section 1116(b)(1)(B)). Section 1116(b)(6) of the ESEA requires an LEA to promptly notify parents of students enrolled in a school identified for improvement, corrective action, or restructuring and to provide them with information regarding what it means to be identified for improvement, corrective action, or restructuring, including an explanation of the parents' option to transfer their child to another public school or the option to obtain SES for the student. Section 1116(b)(1)(E) requires LEAs to provide students enrolled in a school identified for improvement, corrective action, or restructuring with the option to transfer to another school not later than the first day of the school year following such identification. Section 1116(e)(2)(A) requires LEAs with schools in the second year of improvement, in corrective action, or in restructuring to provide, at a minimum, annual notice to parents of the availability of SES, the identity of approved SES providers of those services that are within the LEA or whose services are reasonably available in neighboring LEAs, and a brief description of the services, qualifications, and demonstrated effectiveness of each of those providers.

Current Regulations: Section 200.37(b)(4) and (b)(5) implement the statutory requirements for LEAs to provide notice to parents of public school choice and SES options, respectively.

Proposed Regulations: Proposed § 200.37(b)(4)(iv) would require that LEAs provide to parents an explanation of the available school choices sufficiently in advance of, but no later than 14 calendar days before, the start of the school year, so that parents have adequate time to exercise their choice option before the school year begins.

Proposed § 200.37(b)(5)(ii)(C) would require that the annual notice of the availability of SES explain the benefits of receiving SES, in addition to the identity of approved providers of those services available within the LEA and a brief description of the services, qualifications and demonstrated effectiveness of the providers, as provided in current regulations. Proposed § 200.37(b)(5)(iii) would require this notice to be clear and concise and clearly distinguishable from the other information sent to parents under § 200.37.

Reasons: The importance of notifying parents of their public school choice options in advance of the start of the school year is documented by findings from the National Assessment of Title I (NATI) report (2007). In a survey of LEAs described in this report, those that notified parents about their public school choice options before the first day of school had higher participation rates in public school choice than LEAs that notified parents on or after the first day of school. Yet, only 29 percent of the LEAs that were required to offer public school choice notified parents before the beginning of the school year. Twenty-one percent notified parents at the start of the school year, and 49 percent notified parents after the start of the school year.[12]

[12] Stullich, S., Eisner, E., & McCrary, J. (2007). *National Assessment of Title I: Final Report,*

We know that transferring one's child to another school is an important decision for a parent to make and therefore, it is critical that LEAs provide parents as much advance notice as possible so that they have time to make informed decisions. We also know from the NATI report that parents are more likely to take advantage of their choice options if they are notified in advance of the school year. However, early parent notification may be constrained by several factors, including the time it takes for States to receive students' scores on the State's annual assessment and the time needed to determine whether a school has made AYP based on the students' test scores and the other components of the State's AYP definition (*e.g.*, definition of full academic year, indexes, ''safe harbor''). Further, the Department understands that it is in the best interest of students to have as much time in the school year as possible to learn the content before taking the State's annual assessment.

The Department recognizes that the importance of giving parents the time they need to make decisions regarding their choice option must be balanced by these practical realities of making AYP determinations. Notifying parents as far in advance as possible, but no later than 14 days before the start of the school year, strikes a reasonable balance among these various timing and practical considerations. We also believe that by allowing more time for parents to consider their choice options, there will be greater interest and participation in public school choice.

The NATI report also found that, in 2004–2005, 94 percent of LEAs reported sending parents written notification materials regarding SES options; however in a survey of eligible parents in eight urban school districts, only 53 percent of parents with a child eligible for SES said they had been notified.[13] Additionally, the NATI report found that the quality of LEAs' parent notification letters varied considerably. Specifically, the NATI report looked at 20 parent letters about SES and found that some were easy to read and described SES options in a positive manner, while others were confusing and incomplete, and discouraged the use of SES.[14] The proposed regulations regarding the SES notice would help ensure that LEAs promptly communicate to parents information on SES, and that parents are aware of their SES options and the benefits of those services.

Section 200.39—Responsibilities Resulting From Identification for School Improvement

Statute: Section 1116(b) of the ESEA states that an LEA must identify for school improvement any elementary or secondary school that fails, for two consecutive years, to make AYP. Specifically, LEAs with Title I schools identified for improvement are responsible for providing public school choice to eligible students (section 1116(b)(1)(E)), consulting with identified schools as they develop a school improvement plan (section 1116(b)(3)), and ensuring the provision of technical assistance as the school develops and implements the school improvement plan (section 1116(b)(4)). For Title I schools in their second year of improvement, the LEA must continue with these actions and, in addition, make SES available to eligible students.

Current Regulations: Section 200.39 implements the statutory requirements regarding LEAs' responsibilities for Title I schools identified for improvement.

Proposed Regulations: Proposed § 200.39(c) would require LEAs to provide the public with information regarding the LEA's implementation of the public school choice and SES requirements, as soon as this information becomes available. LEAs would be required to prominently display the following information on the LEA's Web site:

- Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in public school choice.
- Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in SES.
- For the current school year, a list of SES providers approved by the State to serve the LEA and the locations where services are provided.
- For the current school year, a list of available schools that are offered to students eligible to participate in public school choice.

Reasons: We believe that making information regarding an LEA's implementation of the public school choice and SES requirements available and transparent to the public would hold LEAs accountable for implementing these requirements and lead to greater student participation. In addition, information on the SES providers approved to serve students in the LEA and the available schools that are offered to students eligible to participate in public school choice would help parents make informed choices for their children. An LEA's Web site is one way for LEAs to make information on public school choice and SES widely available because these sites can be easily updated with the latest information and are a medium that can be accessed anytime and anywhere by individuals and entities. For parents without access to the Internet, LEAs and community organizations would be encouraged to make this information available to parents through other avenues.

Section 200.43—Restructuring

Statute: Under section 1116(a)(7) of the ESEA, if any school served by an LEA does not make AYP by the end of the second full school year after having been identified for improvement, the LEA must identify the school for corrective action and take one of several specific corrective actions. These may include replacing school staff and instituting a new curriculum. If, after one full school year of corrective action, a school continues not to make AYP, the LEA must identify the school for restructuring and implement a restructuring plan under section 1116(b)(8)(A) of the ESEA. In addition to implementing a restructuring plan, the LEA must continue to provide SES and public school choice to eligible students.

Section 1116(b)(8)(B) of the ESEA sets forth the requirements for implementing restructuring plans and requires that, not later than the beginning of the school year following the year in which an LEA implements restructuring, the LEA must implement one of the following alternative governance arrangements for the school consistent with State law:

(i) Reopen the school as a public charter school;

(ii) Replace all or most of the school staff (which may include the principal) who are relevant to the failure to make AYP;

(iii) Enter into a contract with an entity, such as a private management company with a demonstrated record of effectiveness, to operate the public school;

(iv) Turn the operation of the school over to the SEA, if permitted under State law and agreed to by the State; or

(v) Any other major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance, to improve

Volume I: Implementation. Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

[13] *Id.*

[14] *Id.*

student academic achievement in the school, and that has substantial promise of enabling the school to make AYP.

Current Regulations: Section 200.43 of the current regulations, for the most part, restates the statutory language. The regulations also clarify that a school must continue to implement its restructuring plan until it has made AYP for two consecutive years.

Proposed Regulations: The proposed regulations would make several clarifying changes. First, we propose to move the parenthetical in current § 200.43(a)(1) that provides examples of fundamental reforms to proposed § 200.43(b)(3)(v) to better track the statutory language in section 1116(b)(8)(B)(v) of the ESEA. Second, proposed § 200.43(a)(4) would clarify that interventions implemented as part of a school's restructuring plan must be significantly more rigorous and comprehensive than those interventions implemented under the school's corrective action plan as required under § 200.42. Third, proposed § 200.43(a)(5) would require that an LEA implement interventions that address the reasons for the school's being in restructuring in order to enable the school to exit restructuring as soon as possible. Fourth, the proposed regulations would revise § 200.43(b)(3)(ii) to clarify that, in replacing all or most of the school staff, an LEA may also replace the principal; however, replacing the principal alone would not be sufficient to constitute restructuring. Finally, in addition to the proposed change to track more closely the language in section 1116(b)(8)(B)(v) of the ESEA, proposed § 200.45(b)(3)(v) would clarify again that, in making significant changes in the school's staff, an LEA may not replace only the principal.

Reasons: Based on available data, the Department is concerned that the restructuring requirements in § 200.43 are not being implemented effectively, and in some cases not at all. Preliminary analyses of Department data from 36 States indicate that only approximately 18 percent of schools that were identified for restructuring in either the 2004–2005 or 2005–2006 school year have exited restructuring status.[15] In addition, a recent study from the Government Accountability Office (GAO) found that 40 percent of schools in restructuring did not implement any of the five restructuring options.[16]

The Department needs to address these issues because a large number of schools could potentially enter restructuring in the next few years. For the 2006–2007 school year, 2,330 schools were identified for corrective action, 937 schools were identified for restructuring after not meeting AYP for five years, and 1,242 schools began implementing their restructuring plans after not meeting AYP for six years. It is important to make these proposed regulatory changes at this time in order to strengthen the restructuring requirements and thereby help schools to exit restructuring as soon as possible.

Although rigorous research is limited on what restructuring interventions are most effective and under what conditions, correlational and descriptive studies indicate that more than one reform should be implemented in a school, rather than relying on one ''silver bullet'' to address the significant academic needs of a school that has not made AYP for six or more years. For example, a study of restructuring in Michigan conducted by the Center on Education Policy (CEP) found, in general, that multiple reform efforts tailored to the needs of the schools were more likely to result in the schools' making AYP and exiting restructuring.[17]

To strengthen the requirements for schools in restructuring, we are proposing to clarify, consistent with the statute, that the actions taken by a school identified for restructuring must (1) be significantly more rigorous and comprehensive than those the school implemented as corrective actions and (2) address the reasons for the school's being identified for restructuring. Schools that have been identified for restructuring are in that status because they have continually not made AYP, notwithstanding the reforms undertaken when the school was in improvement or corrective action. Simply continuing the same actions that were unsuccessful in moving the school out of improvement or corrective action is unlikely to be sufficient to move the school out of restructuring. Restructuring requires actions that are more comprehensive and rigorous than those the school took when the school was in improvement or corrective action status.

Consistent with the need for more comprehensive and rigorous actions when a school is in restructuring, we also are proposing to clarify that, when a State, as part of its restructuring plan, chooses to make significant changes in the school's staff, these changes may include, but may not be limited to, replacing the principal. While we believe that it is important to place the right leader in a chronically under-performing school, as permitted in current § 200.43, simply replacing the principal without any other changes is inconsistent with the statute and likely insufficient to move a school out of restructuring.

Just as we would not expect that continuing the same actions that were instituted when a school was in improvement or corrective action would move the school out of restructuring, we also would not expect a school to be able to make sufficient gains to exit restructuring if the interventions do not address the specific reasons that the school continues not to make AYP. For example, if a school is in restructuring because either the ''all students'' group or subgroups that comprise a large percentage of its students have not made AYP for six years, a restructuring plan that addresses only a subset of the students would not be likely to move a school out of restructuring; rather, the restructuring plan would need to be broader in scope and address the needs of the majority of students.

Section 200.44—Public School Choice

Statute: Section 1116(b)(1)(E) requires LEAs to provide students enrolled in a school identified for improvement, corrective action, or restructuring with the option to transfer to another school not later than the first day of the school year following such identification.

Current Regulations: Section 200.44 provides that if an LEA identifies a school for improvement, corrective action, or restructuring, the LEA must provide all students attending the school with the option to transfer to another public school served by the LEA. An LEA must offer this option to parents not later than the first day of the school year following the year in which the LEA administered the assessment that resulted in its identification of the school for improvement, corrective action, or restructuring.

Proposed Regulations: Proposed § 200.44(a)(2)(ii) would reference proposed § 200.37(b)(4) to make clear that an LEA must notify parents about the option to transfer their child to another school and the available public school choices sufficiently in advance of, but no later than 14 calendar days before, the start of the school year so that parents have adequate time to exercise their choice option before the school year begins.

Reasons: Reiterating in the public school choice section of the regulations

[15] U.S. Department of Education. (2008). *EDFacts.* Unpublished raw data.

[16] U.S. Government Accountability Office. (2007). *No Child Left Behind Act: Education Should Clarify Guidance and Address Potential Compliance Issues for Schools in Corrective Action and Restructuring Status (GAO–07–1035). Washington, DC: Author.*

[17] Scott, C. (2007). *What Now? Lessons from Michigan About Restructuring Schools and Next Steps Under NCLB. Washington, DC: Center for Education Policy.*

that notice to parents of the availability of public school choice must occur in a timely manner, consistent with proposed § 200.37(b)(4)(iv), would help ensure that LEAs understand that they must notify parents about their public school choice options sufficiently in advance of the start of the school year so that parents have sufficient time to consider their options and make an informed decision.

Section 200.47—SEA Responsibilities for Supplemental Educational Services

Statute: Section 1116(e)(1) of the ESEA requires LEAs to arrange for the provision of SES to eligible students from a provider with a demonstrated record of effectiveness. A provider is defined in section 1116(e)(12)(B) as a non-profit entity, for-profit entity, or LEA that (1) has a demonstrated record of effectiveness in increasing student academic achievement; (2) is capable of providing SES that are consistent with the instructional program of the LEA and the academic standards described in section 1111 of the ESEA; and (3) is financially sound. Section 1116(e)(3)(A) of the ESEA requires an LEA to develop, with the parents of a child participating in SES and the provider, an agreement that includes a statement of specific achievement goals for the student, a description of how the student's progress will be measured, and a timetable for improving achievement. Section 1116(e)(3)(C) also requires that this agreement be terminated if the provider is unable to meet the goals and timetables specified in the agreement.

Section 1116(e)(4)(B) of the ESEA requires States to develop and apply, in the selection of providers, objective criteria that are based on a demonstrated record of effectiveness in increasing the academic proficiency of students in subjects relevant to meeting the State's academic content and student achievement standards. Section 1116(e)(4)(D) requires States to develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by approved providers and for withdrawing approval from providers that fail, for two consecutive years, to contribute to increasing the academic proficiency of students served. Section 1116(e)(5)(B) requires providers to ensure that their instructional program is consistent with the instruction provided and content used by the LEA and State, and that it is aligned with State student academic achievement standards.

Current Regulations: Section 200.47 repeats the statutory requirements regarding the State's responsibility to approve SES providers with a demonstrated record of effectiveness, and to develop and apply objective criteria to monitor and withdraw approval of providers. Section 200.47 also requires that, to be approved by an SEA, the provider must agree to ensure that the instruction the provider gives and the content the provider uses are consistent with the instruction provided and the content used by the LEA and the SEA, and are aligned with State student academic achievement standards.

Proposed Regulations: We propose several changes to the regulations regarding SEA responsibilities for SES.

Monitoring LEA implementation. Proposed § 200.47(a)(4)(iii) would require a State to develop, implement, and publicly report on standards and techniques for monitoring LEAs' implementation of the SES requirements in the ESEA.

Approving SES providers. Proposed § 200.47(b)(2)(ii) would clarify that, to be approved as an SES provider, an entity must provide the State with evidence that the instruction it would provide and the content it would use are aligned with the State's academic content and student academic achievement standards and are research-based. Proposed § 200.47(b)(3) would require that, as a condition of approval, a State must consider, at a minimum, (1) information from the provider on whether the provider has been removed from any State's approved provider list; (2) parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement; and (3) evaluation results, if any, demonstrating that the instructional program has improved student achievement.

Monitoring approved providers. Proposed § 200.47(c) would specify the evidence that a State must consider when monitoring the quality and effectiveness of the services offered by an approved provider in order to inform the renewal or withdrawal of approval of a provider. Specifically, § 200.47(c) would require a State to examine, at a minimum, evidence that the provider's instructional program (1) is consistent with the instruction provided and the content used by the LEA and SEA; (2) addresses students' individual needs as described in students' SES plans; (3) has contributed to increasing students' academic proficiency (as required by section 1116(e)(4)(D)); and (4) is aligned with State academic content and student academic achievement standards. In addition, States would also be required to consider, if any, parent recommendations, results from parent surveys, or results from other evaluations demonstrating the success of the provider's instructional program in improving student achievement.

Reasons: We believe that providing information to the public about how SEAs monitor the implementation of SES requirements by their LEAs, and enhancing the criteria that SEAs must use to approve and monitor SES providers, would strengthen the implementation of SES by SEAs and LEAs and ultimately contribute to increased student achievement. Following is the rationale for each of these changes.

Monitoring LEA implementation. While SEAs are required under the current regulations to monitor LEAs and their implementation of the SES requirements, the proposed regulations would require SEAs to publicly report on the standards and techniques for how they monitor their LEAs' implementation of the SES requirements. We believe that requiring States to develop, implement, and publicly report on the criteria they use to monitor LEAs' implementation of SES will help ensure that SEAs set rigorous and clear expectations for their LEAs.

Approving SES providers. We have learned in discussions with States that there is uncertainty regarding the evidence that States may require providers to submit as part of their application to be an approved SES provider. We believe that specifying the minimum evidence that SEAs must consider in approving providers will help ensure that students receive high quality SES services and reinforce with States that they have the authority and the responsibility to approve only entities that will contribute to increased student academic achievement.

Monitoring approved providers. To ensure that State-approved providers deliver high quality SES services, it is important that States monitor the provision of SES. We believe that the monitoring criteria in proposed § 200.47(c)(1) would reinforce with States that they have the authority and the responsibility to monitor providers in order to make informed decisions about whether SES providers should remain on a State's approved provider list. We believe that specifying the minimum evidence that SEAs must consider in approving providers will help ensure that students receive high quality SES services and reinforce with States that they have the authority and the responsibility to approve only entities that will contribute to increased student academic achievement.

Section 200.48—Funding for Choice-Related Transportation and Supplemental Educational Services (SES)

Statute and Current Regulations: Section 1116(b)(10) of the ESEA and § 200.48(a)(2) require LEAs to spend an amount equal to 20 percent of their Title I, Part A allocations, unless a lesser amount is needed, to comply with all requests for SES and to provide transportation, or pay for the transportation costs, for students exercising the public school choice option under the ESEA. An LEA may use Title I funds to pay for the costs to implement SES and public school choice, including outreach to parents; however, under § 200.48(a)(2)(iii)(B), the LEA may not count these costs toward meeting its 20 percent obligation.

Proposed Regulations: Proposed § 200.48(a)(2)(iii)(C) would allow an LEA to count costs for providing outreach and assistance to parents regarding public school choice and SES toward meeting its 20 percent obligation. The amount that could be counted toward these costs would be capped at an amount equal to 0.2 percent of the LEA's Title I, Part A, subpart 2 allocation. An LEA would still be able to spend more than that amount on parental outreach activities; the proposed regulations would only cap what could be counted toward meeting the 20 percent obligation.

Proposed § 200.48(d) would require an LEA, before reallocating unused funds from choice-related transportation and SES to other purposes, to demonstrate to the SEA that it had met specific criteria established in proposed § 200.48(d)(1). Specifically, the LEA would have to demonstrate success in the following:

(a) Partnering with community-based organizations or other groups to reach out to eligible students and their families about SES and public school choice opportunities.

(b) Ensuring that eligible students and their parents have had a genuine opportunity to sign up to transfer to another public school or receive SES, including by:

- Providing timely, accurate notice as required in §§ 200.36 and 200.37 of the availability of public school choice and SES.
- Ensuring that sign-up forms for SES are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the Internet, other media, and communications through public agencies serving eligible students and their families.
- Allowing eligible students to sign up for SES throughout the school year.

(c) Ensuring that eligible SES providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities.

If an LEA does not meet these criteria, the proposed regulations would require the LEA to spend the amount remaining from its 20 percent obligation in the following school year for choice-related transportation, SES, or parent outreach (subject to the 0.2 percent cap in § 200.48(a)(2)(iii)(C)). The requirement to spend these unused funds would be in addition to the requirement to spend an amount equal to 20 percent of its Title I, Part A allocation in the following school year.

Reasons: There is evidence indicating that SES participation improves student achievement. A recent study by the RAND Corporation, supported by the Department, found that, in five out of the seven large urban districts in which there were sufficient numbers of students to analyze the effects, students participating in SES showed statistically significant positive effects in both reading and mathematics achievement.[18] However, currently, only 14.5 percent of eligible students take advantage of SES nationwide.[19]

In order to increase participation in SES and public school choice, the Department believes that LEAs need to devote sufficient time and resources to effectively notify parents of available public school choice and SES options. Currently, LEAs are not permitted to count costs for these activities toward meeting their 20 percent obligation for choice-related transportation and SES. The proposed regulations would permit LEAs to count a limited amount of funds for parent outreach and assistance in order to help ensure that LEAs provide parents with the information they need to make the best, most informed decisions for their children.

The proposed regulations also would require LEAs, before reallocating funds for other purposes, to demonstrate to the SEA success in meeting several requirements. Our rationale for each of these requirements follows.

Partnering with community-based organizations. In a survey of LEAs' strategies for communicating with parents about their SES options, only 16 percent of LEAs reported that they worked with a local community partner to reach parents regarding their SES options, and only 10 percent did so to communicate with parents about public school choice options.[20] We learned during visits to LEAs across the country as part of a 2007 outreach tour on SES and public school choice that information from a variety of sources is needed to reach parents and make them fully aware of their SES and public school choice options. LEAs that we met with reported that partnering with community organizations was an effective way of making parents aware of SES and public school choice options for their children.[21]

Providing timely, accurate notice. As noted in our discussion of the proposed changes to § 200.37, the NATI report provides evidence that notifying parents of their public school choice options in a timely manner helps to increase study participation in public school choice. The NATI report also found that in 2004–2005 the quality and clarity of LEAs' parent notification letters regarding SES and public school choice varied considerably with many omitting key information. For example, fewer than half of the 20 public school choice letters that were sampled identified the schools that parents could choose for their children, and fewer than half of the 21 SES letters sampled identified the eligible SES providers.[22] We believe that requiring LEAs to provide parents with timely and accurate notice of their SES and public school choice options is essential to ensuring that parents have the information they need to make informed decisions about their child's education.

Sign-up forms and signing up throughout the school year. The Department believes that parents of students eligible to receive SES should have opportunities to request SES for

[18] U.S. Department of Education. (2007). *State and Local Implementation of the No Child Left Behind Act, Volume I—Title I School Choice, Supplemental Educational Services, and Student Achievement,* Washington, DC: Author.

[19] U.S. Department of Education. *Consolidated State Performance Report, 2006–2007.* Unpublished raw data.

[20] Stullich, S., Eisner, E., & McCrary, J. (2007). *National Assessment of Title I: Final Report, Volume I: Implementation.* Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

[21] U.S. Department of Education, Office of Innovation and Improvement, *Giving Parents Options: Strategies for Informing Parents and Implementing Public School Choice and Supplemental Educational Services Under No Child Left Behind,* Washington, DC, 2007.

[22] Stullich, S., Eisner, E., & McCrary, J. (2007). *National Assessment of Title I: Final Report, Volume I: Implementation.* Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

their children throughout the school year. A short sign-up period at the beginning of the school year may exclude many students from participation, including, for example, children whose parents learn later in the school year that their child is struggling and needs additional support. Moreover, it is important that parents can easily access the forms to sign-up for services. We know from our discussions with States and SES providers that participation in SES is lower when access to sign-up forms is limited, for example, by requiring parents to attend a meeting or to travel to a district or school office to obtain the form. We believe that distributing sign-up forms directly to eligible students and their parents and allowing eligible students to sign up to receive SES services throughout the school year will make it easier for students and parents to take advantage of SES services.

Access to school facilities. The statute does not require LEAs to pay or provide transportation for students to and from SES programs; therefore, if SES providers cannot operate on school grounds, families may have to arrange transportation for their children to the site where SES services are provided. Although the Department has promoted a policy of access to school facilities through non-regulatory guidance and technical assistance for several years, many LEAs around the country continue to deny providers access to their buildings. Giving providers access to school facilities is an important way of ensuring that families can participate in, and students can attend, SES programs.

We believe that these proposed changes will encourage LEAs to improve opportunities for parents to take advantage of their options and result in more students participating in public school choice and SES, ultimately leading to increased student achievement.

Section 200.56—Definition of ''highly qualified teacher''

Statutes and regulations: Under section 9101(23) of the ESEA and § 200.56, a highly qualified teacher in any public elementary or secondary school must hold at least a bachelor's degree and either have (1) obtained full State teacher certification or (2) passed the State teacher licensing examination and hold a license to teach in that State. The ESEA also includes additional requirements for a highly qualified teacher depending on which grade level the teacher teaches and whether the teacher is new to the profession. Under section 1119(a)(1) of the ESEA, beginning with the first day of the 2002–2003 school year, each LEA receiving assistance under Title I, Part A is responsible for applying these requirements to any public school teacher teaching in a core academic subject supported by Part A funds who is hired after that date. The LEA also must have a plan to ensure that all public school teachers teaching in core academic subjects in the LEA meet these requirements by the end of the 2005–2006 school year.

Under section 602(10)(A) of the IDEA and 34 CFR 300.18, a highly qualified special education teacher must obtain full State certification as a special education teacher or pass the State special education teacher licensing exam and hold a license to teach in the State as a special education teacher. The IDEA also includes requirements for special education teachers who teach core academic subjects exclusively to children who are assessed against alternate academic achievement standards. Section 602(10)(C) of the IDEA and 34 CFR 300.18(c) require special education teachers teaching core academic subjects exclusively to alternate achievement standards to meet the NCLB requirements for elementary school teachers *and* have subject matter knowledge appropriate to the level of instruction being provided and needed to teach to those standards effectively. Special education teachers teaching multiple subjects and who are new to the profession have additional flexibility. Section 602(10)(D)(iii) of the IDEA and 34 CFR 300.18(d) permit a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, to have two years to demonstrate competence on the other core area subjects the teacher teaches, which may include a single high objective uniform State standard of evaluation (HOUSSE).

Proposed Regulations: Proposed § 200.56(d) would add a cross-reference to the definition of *highly qualified special education teachers* in 34 CFR 300.18 of the IDEA regulations.

Reasons: Special education teachers provide individualized and specialized instruction to improve the academic achievement of students with disabilities. The current Title I regulations do not define the requirements for highly qualified special education teachers who do not teach core academic subjects. The cross-reference aligns the Title I regulations with the IDEA regulations; the current requirements for highly qualified general or special education teachers would not change.

Executive Order 12866

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

1. Potential Costs and Benefits

The proposed costs have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Department has assessed the costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Department has determined that the benefits of the proposed regulations exceed the costs. The Department also has determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the programs.

Summary of Costs and Benefits

The Department believes that the majority of the proposed regulatory changes will not impose significant costs on States, LEAs, or other entities that participate in programs funded

under Part A of Title I. For example, the entire cost of the National TAC would be borne by the Department and would be financed through funds appropriated by the Congress for the Department's operations. As additional examples, the proposed regulations on multiple measures of student achievement, identification of schools and LEAs for improvement, and restructuring should provide useful clarification to the States without imposing any new costs on them. Similarly, the proposed regulations would require LEAs to notify parents of eligible students of the option to transfer their child to another school, sufficiently in advance of, but no later than 14 calendar days before, the start of the school year to give those parents adequate time to exercise their public school choice option; this regulation would not increase LEA costs because it would affect merely the timing of the parental notification.

As another example, States and LEAs should be able to implement at minimal cost the requirement to include NAEP data on State and LEA report cards. The State NAEP results are available on the NCES Web site and through other sources, and obtaining those data should not pose a significant burden. Neither should including the data on the report cards, as the NAEP results would be a minor addition to the data already so included.

The regulations would clarify that State definitions of AYP must include a minimum subgroup size that is based on sound statistical methodology, that yields statistically reliable information for each purpose for which disaggregated data are used, and that ensures that, to the maximum extent practicable, all student subgroups are included, particularly at the school level, in accountability determinations. All States would be required to revise their Accountability Workbooks and explain how their minimum subgroup sizes meet these criteria and to provide certain other information on their minimum subgroup sizes and AYP definitions. Within six months of the effective date of the final regulation, States would be required to submit to the Department, for technical assistance and peer review, a revised Accountability Workbook that reflects these new requirements.

The Department has previously reviewed each State's minimum subgroup size and believes that some already meet the proposed criteria. Some States, however, may need to revise their minimum subgroup sizes and other components of the State's AYP definition based on the new requirements and on feedback from the new peer review.

The costs to States of submitting a revised Accountability Workbook for technical assistance and peer review should be fairly low, as these Accountability Workbooks would, in large part, incorporate policies and amendments that the States have already included in their Workbooks in past years. The Department estimates that each State would, on average, require 112 hours of staff time to complete this effort, including 80 hours for development and analysis of a proposed minimum subgroup size policy (within an overall definition of AYP) and an additional 32 hours for actual preparation of the Workbook. We further estimate that SEAs' cost for that activity will be $30 an hour. For the 50 States, the District of Columbia, and Puerto Rico, the estimated cost of revising and submitting their Workbooks would thus be $174,720. The Department further estimates that 25 States may need to do additional work on their Accountability Workbooks as a result of feedback from the peer review. The Department estimates that this work will require an additional 40 hours of staff time per State, adding an additional $30,000, for a total estimated cost of $204,720 to implement these proposed requirements.

The Department believes that the costs of implementing this new policy should be minimal. The Department further believes that the benefits of this change, in terms of greater accountability that would result from the use of minimum subgroup sizes that meet the proposed criteria, would greatly outweigh the minimal costs of compliance.

The proposed regulation to allow States to use measures of individual student academic growth in school and LEA AYP determinations would provide States with greater flexibility without burdening them with significant additional costs. Although, in order to receive permission to incorporate individual student academic growth into its AYP definition, a State would have had to have implemented a longitudinal data system that tracks student progress from grade to grade, it is highly unlikely that any State would develop and implement such a data system only (or even primarily) in order to use measures of individual student growth for calculating AYP; this is the case because the benefits of having a longitudinal student data system in place are much greater than just having the ability to support the use of individual student academic growth in calculating AYP. States have found such systems to be valuable in numerous ways, including in tracking the educational progress of students as they progress through grades and across schools and school systems; more accurately determining whether students graduate from high school; calculating accurate student dropout rates; holding schools and LEAs accountable for results; targeting assistance to those schools and LEAs most in need; determining whether the content their secondary schools offer is well aligned with college-preparedness requirements; identifying strengths and weaknesses in teacher preparedness; and measuring the educational performance of the State as a whole. For these reasons, many States had developed longitudinal student data systems, or were in the planning stages of such development, even before the Department announced the Growth Model Pilot in 2005. Therefore, the Department believes it would be inappropriate to assign the costs States incur in designing and implementing longitudinal data systems as a cost of this change in the regulations.

The proposed regulations would require States to adopt a uniform cohort definition of graduation rate no later than school year 2012–2013. States that do not currently have the capacity to track student transfers would be required to use an interim rate, the Averaged Freshman Graduation Rate (AFGR). The regulations also would require the use of disaggregated graduation rate data for AYP purposes beginning in the 2008–2009 school year for States and LEAs and in the 2012–2013 school year for school-level accountability determinations. In addition, the proposed regulations would require a State to include in its AYP definition (a) a graduation rate goal that the State expects all high schools to meet (*e.g.*, 90 percent), and (b) how LEAs demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding the goal. To make AYP, the school or LEA must meet or exceed the graduation rate goal or demonstrate continuous and substantial improvement.

As discussed earlier (in the explanation of the proposed changes to § 200.19), the Department, based on work completed by NCES and the NGA, believes that States can incorporate the AFGR into their AYP definitions using currently available data. The Department, thus, believes these adjustments can be completed at minimal cost. In order to meet the proposed 2012–2013 deadline for implementation of a uniform cohort

graduation rate, States will need to have in place a data system that can track cohorts over four years, including the ability to track (and include in graduation rate calculations) students who drop out of school or leave in order to transfer to another school. States also will need to collect four years of student data through those systems in order to implement the new rate by the proposed deadline. However, it is important to note that, while a data system that tracks individual student data could be used to collect data for this rate, such a system would not be required in order to implement the proposed graduation rate requirements. In addition, the data needed to calculate the AFGR are already available to all schools, LEAs, and States, as reported in the Common Core of Data produced by NCES.

The proposed regulations would not impose new costs on a State unless it does not yet have the data system capability to start collecting the four years of data needed to implement the uniform cohort graduation rate. We believe that the proposed regulations would not impose significant costs on States that they were not likely to assume in the absence of the regulations. In 2005, all 50 States agreed to the National Governors Association's Graduation Counts: A Compact on State High School Graduation Data, which calls for each State to develop a longitudinal graduation rate. In addition, data reported by the States to the Data Quality Campaign indicate that all States except for two will have in place a data system that can track individual students by the end of the 2007–2008 school year.[23] Moreover, one of the two States that does not yet have such a system already uses an alternative method to calculate a cohort graduation rate that would meet the proposed regulatory requirements, and both States report that they will have such a data system by 2009–2010. These States should be able to collect the four years of required data by 2012–2013. Again, all of this reflects activities that the States initiated in the absence of the proposed regulation.

Therefore, as with the regulation on including individual student academic growth in AYP definitions, it would not be appropriate to assume that the cost of developing these data systems would be attributable, in whole or even in large part, to the need to comply with the proposed regulation on the graduation rate. Moreover, the Federal government supports States' development of longitudinal student data systems through the Department's Statewide Longitudinal Data Systems program. For the fiscal years 2005 (when the program began) through 2008, the Congress has appropriated more than $122 million for this program and, through fiscal year 2007, 27 States have received these grants.

We believe the benefits of the proposed changes regarding graduation rate clearly outweigh the fairly minimal net costs previously discussed. A uniform and accurate method of calculating graduation rates is needed to raise expectations and to hold schools, districts, and States accountable for increasing the number of students who graduate on time with a regular high school diploma, as well as to provide parents and the public with more accurate information. By requiring all States to use a more rigorous and accurate graduation rate calculation, the Department can ensure greater accountability and transparency on this important indicator. In addition, we need to have a uniform and accurate method of calculating high school graduation rates to improve our understanding of the scope and characteristics of those students dropping out of school or taking longer to graduate.

The final set of proposed regulations in this package relates to the implementation of public school choice and SES. The proposed language in § 200.37(b)(5)(ii)(C), (b)(5)(iii)(A), and (b)(5)(iii)(B) would require that the notice to parents of students eligible for SES: (a) Explain the benefits of SES, (b) be clear and concise, and (c) be clearly distinguishable from the other information sent to parents under § 200.37. Following, we estimate the costs of meeting this requirement. We note here that LEAs could assign costs related to meeting this requirement to the amount equal to 0.2 percent of their Title I, Part A allocations that the proposed regulations would permit LEAs to use for outreach and assistance to parents on public school choice and SES.

Data from the ESEA Consolidated State Performance Report indicate that approximately 2,000 LEAs nationally have at least one school in year two of school improvement (or in a later stage of the Title I accountability timeline). These are the schools with students eligible for SES that would technically be covered by this new requirement. However, some of these LEAs are not able to offer SES and thus are not affected by the proposed notice requirement. For example, rural and other small or isolated districts often do not have any approved SES providers serving their area. For this reason, our analysis assumes that 80 percent of the estimated 2,000 LEAs with at least one school in year two of improvement or later, or 1,600 districts, will be subject to the notice requirement annually. We estimate that these 1,600 LEAs will each require an average of 12 hours of staff time to prepare the notice to parents so that it is clearly distinguishable from the other information sent to parents and that the cost for this time will average $25 per hour. Under this assumption, the cost for the preparation of this notice will be $480,000.

Further, in the 2006–2007 school year, in the States for which the Department has data, approximately 3.6 million students were eligible for SES.[24] Assuming that approximately 3.6 million students continue to be eligible each year, we project that the parents of one half of these students would receive the SES information by mail, in a separate mailing, and one-half through notices that students bring home from school, in a mailing that includes other information already required to be provided to parents (in § 200.37), or by other means that impose very small costs on LEAs. For the one-half who would receive the notices by mail, the cost (assuming continuation of current postage rates) would be $738,000, bringing the total cost for the implementation of the proposed SES notice requirement to $1,218,000.

The proposed regulations in § 200.39 would require LEAs to post on their Web sites information on their implementation of the public school choice and SES requirements, including information on the number of students who were eligible for and who participated in the public school choice and SES options, information on approved SES providers operating in the district, and a list of schools available to students who wish to take advantage of the public school choice option. Based on data from the ESEA Consolidated State Performance Report, approximately 3,000 LEAs have a school in year one of improvement or later and thus are technically required to offer either public school choice, or both public school choice and SES, to their eligible students. However, as with the SES notice requirement, some of those LEAs would not be affected because they are unable to offer public school choice and SES due to a lack of choice options (for instance, rural and other

[23] Data Quality Campaign, 2007 State Data Collection Survey Results: State Specific Responses to Element 1. (2007). Austin, TX: Author. Available at: *http://www.dataqualitycampaign.org/files/element1_survey_responses.pdf.*

[24] U.S. Department of Education. (2007). *Consolidated State Performance Report, 2006–07.* Unpublished raw data.

small districts frequently have only one school at a particular grade span) or the absence of an approved SES provider serving their area. We estimate that 80 percent of the 3,000 LEAs with a school in year one of improvement or later, or 2,400 districts, would need to post the new information on their Web site. We further estimate that these districts would require an average of 25 hours of staff time to prepare the data for the Web, at a cost of $25 per hour, for an estimated national cost of $1,500,000 to meet the new requirement to post public school choice and SES information on LEA web sites. Therefore, the total estimated cost for implementation of the new SES and Web site notice requirements is $2,718,000.

The benefits would be that parents and others would have more and better information on the public school choices and SES programs available to eligible children and, thus, parents might be more likely to take advantage of those options (with attendant benefits for those children) and that LEA implementation of the choice and SES requirements would be more transparent. We also note that LEAs could assign costs related to meeting this requirement to the amount equal to 0.2 percent of their Title I, Part A allocations under proposed § 200.48(a)(2)(iii)(C).

The proposed regulations in § 200.47 would clarify the SEA's responsibilities for SES, by stating that those responsibilities include developing, implementing, and publicly reporting on the SEA's standards and techniques for monitoring LEAs' implementation of SES. The Department believes that States already have such standards and techniques in place and that the burden of publicly reporting on them, such as by posting information about them on the SEA's Web site, would be very minimal. The benefit of the proposed regulations would be greater transparency of how SEAs monitor LEAs implementation of SES.

The proposed regulations in § 200.47 would also clarify that, in order to be approved as an SES provider, an entity must provide the State with evidence that the instruction it would provide and the content it would use are aligned with the State's academic content and student academic achievement standards and are research based. In addition, a State would also be required to consider, at a minimum, (1) whether the entity has been removed from any State's approved provider list; (2) parent recommendations or results from parent surveys, if any, regarding the success of the entity's instructional program in increasing student achievement; and (3) evaluation results, if any, demonstrating that the instructional program has improved student achievement. The Department believes that these requirements will result in improvements in States' SES provider approval procedures resulting in high-quality SES and improved student achievement, and that the cost of compliance will be very minimal.

The proposed regulations in § 200.47 also would specify the evidence that States must consider when monitoring the quality and effectiveness of the services offered by an approved provider in order to inform decisions on renewal or withdrawal of approval of the provider. The current statute and regulations already require States to approve SES providers with a demonstrated record of effectiveness, and to develop and apply objective criteria for monitoring and withdrawal of approval of providers. The proposed regulations may add minimal costs to States if they need to revise their applications or monitoring protocol in order to comply with the requirements, or if a revised application or protocol results in more labor-intensive application review or monitoring. The proposed regulations would only add costs to SES providers if they are not already providing this information to States in their applications for approval and renewal. The minimal costs to States and SES providers would be outweighed by the benefits of having a clear outline of the evidence that States must consider both before providers begin serving students in the State and as their programs are monitored and being considered for renewal or termination.

The proposed regulations on funding for public school choice and SES in § 200.48 would allow LEAs to count costs for parent outreach and assistance toward the requirement to spend the equivalent of 20 percent of the LEA's Title I, Part A allocation on choice-related transportation and SES. This change would permit an LEA to allocate up to 0.2 percent of its Title I, Part A allocation (1.0 percent of the 20 percent obligation) in that manner. Allowing LEAs to count a limited amount of funds for parent outreach and assistance will help ensure that parents have the information they need to make the best decisions for their children. This change would not impose costs on LEAs, as they would, at their discretion, support the parental outreach and assistance activities by redirecting funds from other activities.

The proposed amendments to § 200.48 also would require LEAs, before reallocating funds from choice-related transportation and SES to other purposes, to provide satisfactory evidence to the SEA that they have demonstrated success in:

(1) Partnering with community-based organizations and other groups in order to inform eligible students and their families about their opportunities for public school choice and SES;

(2) Ensuring that eligible students and their families have had a genuine opportunity to transfer to schools or to receive SES. The proposed language would clarify that providing such an opportunity includes (a) providing timely and accurate notice to those students and their families, as required under §§ 200.36 and 200.37; and (b) ensuring that sign-up forms for SES are distributed directly to all eligible students and are made widely available and accessible; and (c) allowing eligible students to sign up to receive SES throughout the school year; and

(3) Ensuring that approved SES providers are given access to school facilities through a fair, open, and objective process.

The Department believes that most of the costs that LEAs would incur in meeting these requirements would be minimal. The most tangible costs would be for developing a clearly distinguishable notification (on eligibility and the benefits of SES) to parents of eligible students (which has been accounted for in the cost estimate for § 200.37) and in documenting to the SEA that it has met the various outreach and access requirements in proposed § 200.48. We estimate these additional SEA documentation costs related to § 200.48 as follows.

As noted earlier, we project that 2,400 LEAs annually will be required to offer public school choice, or both choice and SES, to their eligible students. Further, based on data for 378 LEAs reported to the Department's ED*Facts* data system, we estimate that 10 percent of those LEAs (240) will use the full 20 percent equivalent for choice-related transportation and SES and, thus, will not be affected by the regulations.[25] Further, based on the ED*Facts* data, we estimate that an additional 15 percent of the LEAs (360) will not initially meet the 20 percent requirement but will spend the remaining funds for choice-related transportation and SES in the following year, rather than applying to

[25] The ED*Facts* data from 2005–2006 indicate that 8.2 percent of LEAs used the equivalent of at least 20 percent of their Title I allocation to fund SES. Unfortunately, the data do not include expenditures for choice-related transportation. We assume that the inclusion of expenditures for choice-related transportation would bring the total to approximately 10 percent.

the SEA for permission to use those funds for other purposes.[26]

The remaining 1,800 LEAs, under our assumptions, would need to submit evidence to their SEAs that they have demonstrated success in the indicated areas. We estimate that the annual cost of this effort will be $720,000, based on an assumption that each LEA would require 16 hours to prepare a submission documenting its efforts in this area and that LEAs' costs for this effort would be $25 per hour.

The Department also has estimated the costs that SEAs will incur in considering the submissions prepared by LEAs. We have estimated that the total annual cost would be approximately $27,000, based on an assumption that, as described previously, 1,800 LEAs will submit them, that SEAs will require 30 minutes to review and act on each submission, and that SEAs' costs for that activity will be $30 per hour. The total estimated annual cost for LEAs and SEAs related to the reallocation requirements of proposed § 200.48 would be $747,000.

Overall, the total estimated cost of implementing the proposed regulations on public school choice and SES would be $3,465,000.

Although our cost estimates for the proposed public school choice and SES regulations are necessarily speculative (because of the limited availability of relevant data), the estimated costs are low even if some of the assumptions are changed significantly. For example, if the number of hours required at each stage of implementing the new public school choice and SES regulations were doubled, the total annual cost would increase only to $6,192,000. These costs, even when combined with the estimated $204,720 attributable to implementation of the proposed regulations on minimum subgroup size and submission of revised Accountability Workbooks, are an extremely small amount within the context of the $13.9 billion Title I program.

The Department believes that promulgation of the regulations on public school choice and SES will result in significant benefits, in terms of more students receiving choice and SES under Title I and students and their families receiving better information about their options. A recent study by the RAND Corporation, supported by the Department, found that, in five out of the seven large urban districts in which there were sufficient numbers of students to analyze the effects, the students participating in SES showed statistically significant positive effects in both reading and mathematics achievement.[27] Moreover, for those students using SES for multiple years, the analysis suggests that the positive effects might accumulate over time. If SES can continue to improve student achievement and close the achievement gap, students, schools, and LEAs will benefit. In sum, the Department believes that the benefits students will receive, if more LEAs provide eligible students with a genuine opportunity to take advantage of the public school choice and SES options, will well exceed the small costs LEAs and SEAs would assume in implementing these regulations. Moreover, LEAs and SEAs will be able to use Federal funds provided through Title I, Part A to meet the aforementioned administrative expenses.

The major benefit of these proposed regulations, taken in their totality, is a Title I, Part A program in which clearer accountability and implementation requirements (particularly in the areas of high school graduation, public school choice, and SES) would be coupled with greater flexibility in implementation (particularly in the use of measures of individual student academic growth in calculating AYP). These proposed regulations would thus add to the contributions that NCLB has made to the creation of a system in which schools, LEAs, and States expect to educate all children to high standards and are held accountable for doing so. The proposed regulations would support the attainment of increases in student achievement that build on the improvements that the Nation has seen in the last several years. The benefits to the United States, both economic and non-economic, of having a more educated citizenry have been plentiful and will continue to be so as the reforms implemented as a result of NCLB (and as supported through the proposed regulations) continue to take hold.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interfere with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 200.13 Adequate yearly progress in general.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The small entities that the proposed regulations will affect are small LEAs receiving funds under Title I. These proposed regulations would not have a significant economic impact because the regulations impose minimal requirements beyond those that would otherwise be required under the Act, with most of those requirements falling on SEAs. Further, the small LEAs should be able to meet the costs of compliance with these regulations using Federal funds provided through Title I.

Paperwork Reduction Act of 1995

These proposed regulations contain information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of the specific information collection requirements is given below with an

[26] This estimate is based on the assumption that LEAs that spend close to the 20 percent will find it more efficient to spend the remaining funds the following year than to apply to the SEA for approval to use those funds for other purposes. The ED*Facts* data from 2005–2006 indicate that 11.6 percent of LEAs used the equivalent of at least 16 percent (but less than 20 percent) of their Title I allocations for SES. Again, the data do not include expenditures for choice-related transportation; we assume that if those expenditures were included, approximately 15 percent of LEAs will elect to spend the remaining funds of their obligation in the succeeding year.

[27] U.S. Department of Education. (2007). *State and Local Implementation of the No Child Left Behind Act, Volume I—Title I School Choice, Supplemental Educational Services, and Student Achievement*, Washington, DC: Author.

estimate of the annual recordkeeping burden for these requirements. (Two of the requirements do not add additional burden to what has already been approved.) Included in the estimate is the time for collecting and tracking data, maintaining records, calculations, and reporting.

The proposed regulations include information collection requirements associated with the following provisions that will add additional burden:

§ 200.7(a)(2)(i); § 200.11(c); § 200.19(a)(1); § 200.19(a)(1)(i); § 200.19(a)(1)(i)(C)(2); § 200.19(a)(1)(ii)(A); § 200.19(d)(1); § 200.19(e)(1); § 200.19(e)(2); § 200.20(h); § 200.37(b)(5); § 200.39(c); § 200.47(a)(4)(iii); and § 200.48(d).

Interested persons are requested to send comments regarding the information collections to the U.S. Department of Education (ED) within 60 days after publication of these proposed regulations. This comment period does not affect the deadline for public comments associated with these proposed regulations.

Collections of information: State Educational Agency Local Educational Agency, and School Data Collection and Reporting under ESEA, Title I, Part A (OMB Number 1810–0581) and Consolidated State Application (OMB Number 1810–0576).

Burden hours and cost estimates for the proposed regulations pertaining to ''State Educational Agency, Local Educational Agency, and School Data Collection and Reporting under ESEA, Title I, Part A (OMB Number 1810–0581)'' are presented in the following tables on the next two pages. The first table presents the estimated burden for SEAs and the second table the estimated burden for LEAs.

TITLE I.—REGULATIONS (COLLECTION 1810–0581) PROPOSED REGULATIONS BURDEN HOURS/COST FOR SEAS

Citation	Description	Number of respondents	Average number of hours per respondent	Total hours	Total cost (total hours × $30.00)
§ 200.11(c)	Adding NAEP data to SEA report cards and developing tool for parents to compare NAEP and State assessment data.	52	5	260	$7,800
§ 200.19(a)(1)	By SY 2012–2013 begin calculating graduation rate as the number of students graduating in the standard number of years divided by the number of students in that class's adjusted cohort.	47	240	11,280	338,400
§ 200.19(a)(1)(ii)(A)	Through SY 2011–2012 option to calculate graduation rate using the Averaged Freshman Graduation Rate (AFGR).	47	40	1,880	56,400
§ 200.19(e)(1)	By SY 2012–2013 calculate the graduation rate in accordance with § 200.19(a)(1) in the aggregate and disaggregate for reporting under section 1111(h) of ESEA and determining AYP under § 200.20.	47	120	5,640	169,200
§ 200.19(e)(2)	Through SY 2011–2012 at the LEA and State levels calculate the graduation rate in accordance with § 200.19(a)(1) or § 200.19(a)(1)(ii) for reporting under section 1111(h) of ESEA and determining AYP under § 200.20; and at the school level in the aggregate for determining AYP under § 200.20(b)(2) but in the aggregate and disaggregate for determining AYP under § 200.20(b)(2) and reporting under section 1111(h) of ESEA.	47	120	5,640	169,200
§ 200.47(a)(4)(iii)	Develop, implement, and publicly report on standards and techniques for monitoring LEAs' implementation of the SES requirements.	52	40	2,080	62,400
§ 200.48(d)	Reviewing LEAs' submissions on demonstrating success in the indicated areas.	52	21.634	1,125	33,750
Total	N/A	52	N/A	27,905	837,150

Information collection activities are also associated with other proposed revisions to § 200.47(a)(4) at the SEA level. These particular revisions, however, would not pose an additional burden to SEAs because they simply specify how SEAs are to carry out this part of the regulation and related regulations, but should not require additional time beyond the hours already estimated for § 200.47(a) in the currently approved 1810–0581 collection.

TITLE I.—REGULATIONS (COLLECTION 1810–0581) PROPOSED REGULATIONS BURDEN HOURS/COST FOR LEAS

Citation	Description	Number of respondents	Average number of hours per respondent	Total hours	Total cost (total hours × $25.00)
§ 200.19(a)(1)(i)	Documentation that a student has enrolled in a program of study in another school, LEA, or other educational program that culminates in the award of a regular high school diploma.	13,987	50	699,350	$17,483,750
§ 200.37(b)(5)	Providing notice to parents that their children are eligible for SES and describing the benefits of SES.	3,000	12	36,000	900,000
§ 200.39(c)	Provide information on public school choice and SES.	2,400	25	60,000	1,500,000
§ 200.48(d)	Demonstrating success in the indicated areas	2,250	16	36,000	900,000
Total		13,987	N/A	831,350	20,783,750

Information collection activities are also associated with modified § 200.37(b)(4)(iv) and the new regulation in § 200.44(a)(2)(ii). The information collection activities associated with these changes would not pose an additional burden to LEAs; they simply cross reference an existing regulation (§ 200.37) for which sufficient hours are already accounted for in the currently approved 1810–0581 collection.

SEA burden hours and cost estimates for the proposed regulations pertaining to ''Consolidated State Application (OMB Number 1810–0576)'' are presented in the following table.

TABLE 3.—CONSOLIDATED STATE APPLICATION (COLLECTION 1810–0576)

Citation	Description	Number of respondents	Average number of hours per respondent	Total hours	Total cost (total hours × $30.00)
§ 200.7(a)(2)(i)	Determining minimum subgroup size and revising Accountability Workbook.	52	112	5,824	$174,720
§ 200.19(a)(1)(i)(C)(2)	Option for State to propose an alternate definition of ''standard number of years'' for limited categories of students.	52	40	2,080	62,400
§ 200.19(d)(1)	Requirement for State to obtain approval of its definition of ''continuous and substantial improvement'' to determine whether high schools make AYP.	52	40	2,080	62,400
§ 200.20(h)	Request waiver under section 9401 of ESEA to incorporate academic growth into State's AYP definition.	52	240	12,480	374,400
Total		52	N/A	22,464	673,920

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Commenters need only submit comments via one submission medium. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Requests for copies of the submission for OMB review may be accessed from *http//edicsweb.ed.gov* by selecting the ''Browse Pending Collections'' link. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ Building, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to (202) 401–0920.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family-centered education, Grant programs—education, Indians—education, Infants and children, Institutions of higher education, Juvenile delinquency, Local educational agencies, Migrant labor, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

Dated: April 17, 2008.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. Section 200.2 is amended by revising paragraph (b)(7) to read as follows:

§ 200.2 State responsibilities for assessment.

* * * * *

(b) * * *

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content, as defined by the State. These measures may include—

(i) Single or multiple question formats that range in cognitive complexity within a single assessment; and

(ii) Multiple assessments within a subject area.

* * * * *

3. Section 200.7 is amended by:

A. Revising paragraph (a)(2)(i).

B. Redesignating paragraph (a)(2)(ii) as (a)(2)(iv).

C. Adding new paragraphs (a)(2)(ii) and (a)(2)(iii).

The revision and additions read as follows:

§ 200.7 Disaggregation of data.

(a) * * *

(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) 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 subgroup size meets the requirements of paragraph (a)(2)(i) of this section;

(B) An explanation of how other components of the State's definition of adequate yearly progress (AYP), in addition to the State's minimum subgroup size, interact to affect the statistical reliability of the data and to ensure the maximum inclusion of all students and student subgroups in § 200.13(b)(7)(ii); and

(C) Information regarding the number and percentage of students and student subgroups in § 200.13(b)(7)(ii) excluded from school-level accountability determinations.

(iii) No later than six months following the effective date of this regulation, each State must submit a revised Consolidated State Application Accountability Workbook in accordance with paragraph (a)(2)(ii) to the Department for technical assistance and peer review under the process established by the Secretary under section 1111(e)(2) of the Act.

* * * * *

4. Section 200.11 is amended by adding a new paragraph (c) to read as follows:

§ 200.11 Participation in NAEP.

* * * * *

(c) *Report cards.* Each State and LEA must report on its annual State or LEA report card, respectively, the most recent available academic achievement results in each grade assessed, in the aggregate and disaggregated, on the State's NAEP reading and mathematics assessments under paragraph (a) of this section.

* * * * *

5. Section 200.19 is amended by:

A. Revising paragraph (a)(1).

B. Revising paragraph (d).

C. Redesignating paragraph (e) as paragraph (f).

D. Adding a new paragraph (e).

The revisions and addition read as follows:

§ 200.19 Other academic indicators.

(a) * * *

(1) *High schools.* The graduation rate for public high schools, defined as follows:

(i) Beginning no later than the 2012–2013 school year, a State must calculate the graduation rate as the number of students who graduate in the standard number of years with a regular high school diploma divided by the number of students who form the adjusted cohort for that graduating class.

(A)(*1*) Consistent with paragraph (a)(1)(i)(C) of this section, the term ''adjusted cohort'' means the students who entered grade 9 together and any students who transferred into or entered the cohort in grades 9 through 12 minus any students removed from the cohort.

(*2*) To remove a student from the cohort, a school or LEA must confirm that the student has either transferred or is deceased. To confirm that a student has transferred, the school or LEA must have official documentation that the student has enrolled in a program of study in another school, LEA, or other educational program that culminates in the award of a regular high school diploma.

(*3*) A student who is retained in grade, enrolled in a General Educational Development (GED) program, or leaves school for any other reason may not be counted as a transfer for the purpose of calculating the graduation rate and must remain in the adjusted cohort.

(B) The term ''regular high school diploma'' means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a GED, certificate of attendance, or any alternative award.

(C)(*1*) The term ''standard number of years'' means four years unless a high school begins after ninth grade, in which case the standard number of years is the number of grades in the school.

(*2*) A State may propose, for approval by the Secretary, an alternate definition of ''standard number of years'' that would apply to limited categories of students who, under certain conditions, may take longer to graduate.

(ii)(A) A State that does not have in effect a Statewide data system necessary to calculate the graduation rate as defined in paragraph (a)(1)(i) of this section must use the Averaged Freshman Graduation Rate (AFGR) on a transitional basis. The AFGR is the number of high school students who graduate in the standard number of years with a regular high school diploma, as defined in this section, divided by the number of students in the incoming freshman class four years earlier (assuming that the standard number of years is four under paragraph (a)(1)(i)(C) of this section), which is estimated by averaging the enrollment of that freshman class with the enrollment of that class in eighth grade the prior year and in tenth grade the subsequent year (or the average of the enrollment for the ninth and tenth grades if a school or LEA does not have an eighth grade).

(B) A State may not use the AFGR to calculate graduation rate after school year 2011–2012.

* * * * *

(d)(1) A State must—

(i) Set a graduation rate goal that represents the rate the State expects all high schools to meet;

(ii) Define how schools and LEAs demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding the graduation rate goal; and

(iii) Submit to the Secretary for approval the graduation rate goal and the definition of continuous and substantial improvement.

(2) Beginning in the 2008–2009 school year, in order to make AYP, a high school or LEA must—

(i) Meet or exceed the graduation rate goal set by the State under paragraph (d)(1)(i) of this section; or

(ii) Demonstrate continuous and substantial improvement from the prior year, as defined by the State under paragraph (d)(1)(ii) of this section.

(3) A State may, but is not required to, increase the goals of its academic indicators other than graduation rate.

(e)(1) No later than the 2012–2013 school year, a State must calculate the graduation rate in paragraph (a)(1)(i) of this section at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup 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) for reporting under section 1111(h) of the Act (annual report cards) and for determining AYP under § 200.20.

(2) Prior to school year 2012–2013, a State must calculate the graduation rate in paragraph (a)(1)(i) or (a)(1)(ii) of this section—

(i) At the LEA and State levels, in the aggregate and disaggregated in accordance with paragraph (e)(1) of this section; and

(ii) At the school level—

(A) In the aggregate for determining AYP under § 200.20(a)(1)(ii); but

(B) In the aggregate and disaggregated by each subgroup 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) for purposes of determining AYP under § 200.20(b)(2) (''safe harbor''), for reporting under section 1111(h) of the Act (annual report cards), and as required under section 1111(b)(2)(C)(vii) of the Act (additional other academic indicators in a State's definition of AYP).

(3) With respect to its other academic indicators, other than graduation rate, a State—

(i) Must disaggregate those indicators by each subgroup described 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) for purposes of determining AYP under § 200.20(b)(2) (''safe harbor''), for reporting under section 1111(h) of the Act (annual report cards), and as required under section 1111(b)(2)(C)(vii) of the Act (additional other academic indicators in a State's definition of AYP); but

(ii) Need not disaggregate those indicators for determining AYP under § 200.20(a)(1)(ii) (meeting the State's annual measurable objectives).

* * * * *

6. Section 200.20 is amended by:

A. Adding a new paragraph (h).

B. Revising the authority citation.

The addition and revision read as follows:

§ 200.20 Making adequate yearly progress.

* * * * *

(h) *Student academic growth.* (1) A State may request authority under section 9401 of the Act to incorporate student academic growth in the State's definition of AYP under this section.

(2) A State's policy for incorporating student academic growth in the State's definition of AYP must—

(i) Set annual growth targets that—

(A) Will lead to all students, by school year 2013–2014, meeting or exceeding the State's proficient level of academic achievement on the State assessments under § 200.2;

(B) Are based on meeting the State's proficient level of academic achievement on the State assessments under § 200.2 and are not based on individual student background characteristics; and

(C) Measure student achievement separately in mathematics and reading/language arts;

(ii) Ensure that all students enrolled in the grades tested under § 200.2 are included in the State's assessment and accountability systems;

(iii) Hold all schools and LEAs accountable for the performance of all students and the student subgroups described in § 200.13(b)(7)(ii);

(iv) Be based on State assessments that—

(A) Produce comparable results from grade to grade and from year to year in mathematics and reading/language arts;

(B) Have been in use by the State for more than one year; and

(C) Have received full approval from the Secretary before the State determines AYP based on student academic growth;

(v) Track student progress through the State data system;

(vi) Include, as separate factors in determining whether schools are making AYP for a particular year—

(A) The rate of student participation in assessments under § 200.2; and

(B) Other academic indicators as described in § 200.19; and

(vii) Describe how the State's annual growth targets fit into the State's accountability system in a manner that ensures that the system is coherent and that incorporating student academic

growth into the State's definition of AYP does not dilute accountability.

(3) A State's proposal to incorporate student academic growth in the State's definition of AYP will be peer reviewed under the process established by the Secretary under section 1111(e)(2) of the Act.

(Authority: 20 U.S.C. 6311(b)(2), (b)(3)(C)(xi); 7861)

7. Section 200.22 is added to read as follows:

§ 200.22 National Technical Advisory Council.

(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, including experts with technical knowledge related to statistics and psychometrics.

(2) The National TAC shall be composed of 10 to 15 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 conflicts, or the appearance thereof, in the National TAC's performance of its responsibilities under this section.

(c) The Secretary shall use the National TAC to provide its expert opinions on matters that arise during the State Plan review process.

(d) The Secretary shall prescribe and publish the rules of procedure for the National TAC.

(Authority: 20 U.S.C. 6311(e))

8. Section 200.32 is amended by:

A. Redesignating paragraph (a)(1) as paragraph (a)(1)(i).

B. Adding a new paragraph (a)(1)(ii).

The addition reads as follows:

§ 200.32 Identification for school improvement.

(a)(1)(i) * * *

(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.

* * * * *

9. Section 200.37 is amended by:

A. Adding new paragraph (b)(4)(iv).

B. Adding new paragraph (b)(5)(ii)(C).

C. Adding new paragraph (b)(5)(iii).

The additions read as follows:

§ 200.37 Notice of identification for improvement, corrective action, or restructuring.

* * * * *

(b) * * *

(4) * * *

(iv) The explanation of the available school choices must be made sufficiently in advance of, but no later than 14 calendar days before, the start of the school year so that parents have adequate time to exercise their choice option before the school year begins.

(5) * * *

(ii) * * *

(C) An explanation of the benefits of receiving supplemental educational services.

(iii) The annual notice of the availability of supplemental educational services must be—

(A) Clear and concise; and

(B) Clearly distinguishable from the other information sent to parents under this section.

* * * * *

10. Section 200.39 is amended by adding a new paragraph (c) to read as follows:

§ 200.39 Responsibilities resulting from identification for school improvement.

* * * * *

(c) The LEA must prominently display on its Web site, as soon as it becomes available, the following information regarding the LEA's implementation of the public school choice and supplemental educational services requirements of the Act and this part:

(1) Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in public school choice.

(2) Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in supplemental educational services.

(3) For the current school year, a list of supplemental educational services providers approved by the State to serve the LEA and the locations where services are provided.

(4) For the current school year, a list of available schools to which students eligible to participate in public school choice may transfer.

* * * * *

11. Section 200.43 is amended by:

A. Revising paragraph (a)(1).

B. In paragraph (a)(2), removing the word ''and'' at the end of the paragraph.

C. In paragraph (a)(3), removing the punctuation ''.'' and adding in its place the punctuation '';'' at the end of the paragraph.

D. Adding new paragraphs (a)(4) and (a)(5).

E. Revising paragraph (b)(3)(ii).

F. Revising paragraph (b)(3)(v).

The additions and revisions read as follows:

§ 200.43 Restructuring.

(a) * * *

(1) Makes fundamental reforms to improve student academic achievement in the school;

* * * * *

(4) Is significantly more rigorous and comprehensive than the corrective action that the LEA implemented in the school under § 200.42; 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) * * *

(3) * * *

(ii) Replace all or most of the school staff (which may include, but may not be limited to, replacing the principal) who are relevant to the school's failure to make AYP.

* * * * *

(v) Any other major restructuring of a school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staff (which may include, but may not be limited to, replacing the principal) and governance, in order to improve student academic achievement in the school and that has substantial promise of enabling the school to make AYP.

* * * * *

12. Section 200.44 is amended by revising paragraph (a)(2) to read as follows:

§ 200.44 Public school choice.

(a) * * *

(2) The LEA must—

(i) Offer this option not later than the first day of 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; and

(ii) Provide timely notice consistent with § 200.37(b)(4).

* * * * *

13. Section 200.47 is amended by:

A. Revising the introductory text in paragraph (a)(4).

B. In paragraph (a)(4)(i), removing the word ''and'' at the end of the paragraph.

C. In paragraph (a)(4)(ii), removing the punctuation ''.'' and adding in its place the words ''; and'' at the end of the paragraph.

D. Adding a new paragraph (a)(4)(iii).

E. Revising paragraph (b)(2)(ii)(B).

F. Redesignating paragraph (b)(2)(ii)(C) as paragraph (b)(2)(ii)(D).

G. Adding a new paragraph (b)(2)(ii)(C).

H. Redesignating paragraph (b)(3) as paragraph (b)(4).

I. Adding a new paragraph (b)(3).

J. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 200.47 SEA responsibilities for supplemental educational services.

(a) * * *

(4) Consistent with paragraph (c) of this section, develop, implement, and publicly report on standards and techniques for—

* * * * *

(iii) Monitoring LEAs' implementation of the supplemental educational services requirements of the Act and this part.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) Are aligned with State academic content and student academic achievement standards;

(C) Are research-based; and

* * * * *

(3) In approving a provider, the SEA must consider, at a minimum—

(i) Information from the provider on whether the provider has been removed from any State's approved provider list;

(ii) Parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement; and

(iii) Evaluation results, if any, demonstrating that the instructional program has improved student achievement.

* * * * *

(c) *Standards for monitoring approved providers.* To monitor the quality and effectiveness of services offered by an approved provider in order to inform the renewal or the withdrawal of approval of the provider—

(1) An SEA must examine, at a minimum, evidence that the provider's instructional program—

(i) Is consistent with the instruction provided and the content used by the LEA and the SEA;

(ii) Addresses students' individual needs as described in students' supplemental educational services plans under § 200.46(b)(2)(i);

(iii) Has contributed to increasing students' academic proficiency; and

(iv) Is aligned with the State's academic content and student academic achievement standards; and

(2) The SEA must also consider information, if any, regarding—

(i) Parent recommendations or results from parent surveys regarding the success of the provider's instructional program in increasing student achievement; and

(ii) Evaluation results demonstrating that the instructional program has improved student achievement.

* * * * *

14. Section 200.48 is amended by:

A. Adding a new paragraph (a)(2)(iii)(C).

B. Adding a new paragraph (d).

The additions read as follows:

§ 200.48 Funding for choice-related transportation and supplemental educational services.

(a) * * *

(2) * * *

(iii) * * *

(C) The LEA may count in the amount the LEA is required to spend under paragraph (a) of this section its costs for outreach and assistance to parents concerning their choice to transfer their child or to request supplemental educational services, up to an amount equal to 0.2 percent of its allocation under subpart 2 of part A of Title I of the ESEA.

* * * * *

(d) *Unexpended funds for choice-related transportation and supplemental educational services.* (1) If an LEA does not fully meet the requirements in paragraph (a)(2) of this section in a given school year, the LEA must spend the unexpended amount in the subsequent school year on choice-related transportation costs, supplemental educational services, or parent outreach and assistance (consistent with paragraph (a)(2)(iii)(C)) unless the SEA approves the LEA's request to spend a lesser amount based on the SEA's determination that the LEA has demonstrated success in—

(i) Partnering with community-based organizations or other groups to help inform eligible students and their families of the opportunities to transfer or to receive supplemental educational services;

(ii) Ensuring that eligible students and their parents had a genuine opportunity to sign up to transfer or to obtain supplemental educational services, including by—

(A) Providing timely, accurate notice as required in §§ 200.36 and 200.37;

(B) Ensuring that sign-up forms for supplemental educational services are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the Internet, other media, and communications through public agencies serving eligible students and their families; and

(C) Allowing eligible students to sign up to receive supplemental educational services throughout the school year; and

(iii) Ensuring that eligible supplemental educational services providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities.

(2) The LEA must spend the unexpended funds under paragraph (d)(1) of this section in addition to the funds it is required to spend under paragraph (a)(2) of this section in the subsequent school year.

* * * * *

15. Section 200.50 is amended by:

A. Redesignating paragraph (d)(1) as paragraph (d)(1)(i).

B. Adding a new paragraph (d)(1)(ii).

The addition reads as follows:

§ 200.50 SEA review of LEA progress.

* * * * *

(d) * * *

(1)(i) * * *

(ii) In identifying LEAs for improvement, an SEA—

(A) May base identification on whether an LEA 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 LEAs 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.

* * * * *

16. Section 200.56 is amended by:

A. Revising the introductory text.

B. Adding a new paragraph (d).

C. Revising the authority citation.

The revisions and addition read as follows:

§ 200.56 Definition of ''highly qualified teacher.''

Except as provided in paragraph (d), to be a ''highly qualified teacher,'' a teacher described in § 200.55 must meet the requirements in paragraph (a) and either paragraph (b) or (c) of this section.

* * * * *

(d) To be a ''highly qualified special education teacher,'' a teacher must meet the requirements in 34 CFR 300.18.

(Authority: 20 U.S.C. 1401(10); 7801(23))

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