

**DEPARTMENT OF EDUCATION****34 CFR Parts 200 and 299**

RIN 1810–AB27

[Docket ID ED–2016–OESE–0032]

**Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act—Accountability and State Plans**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations implementing programs under title I of the Elementary and Secondary Education Act of 1965 (ESEA) to implement changes to the ESEA by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015. The Secretary also proposes to update the current ESEA general regulations to include requirements for the submission of State plans under ESEA programs, including optional consolidated State plans.

**DATES:** We must receive your comments on or before August 1, 2016.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](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 “Are you new to the site?”

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Meredith Miller, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C106, Washington, DC 20202–2800.

*Privacy Note:* The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Meredith Miller, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C106, Washington, DC 20202–2800.

*Telephone:* (202) 401–8368 or by email: [Meredith.Miller@ed.gov](mailto:Meredith.Miller@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

*Purpose of This Regulatory Action:* On December 10, 2015, President Barack Obama signed the ESSA into law. The ESSA reauthorizes the ESEA, which provides Federal funds to improve elementary and secondary education in the Nation’s public schools. ESSA builds on ESEA’s legacy as a civil rights law and seeks to ensure every child, regardless of race, income, background, or where they live has the chance to make of their lives what they will. Through the reauthorization, the ESSA made significant changes to the ESEA for the first time since the ESEA was reauthorized through the No Child Left Behind Act of 2001 (NCLB), including significant changes to title I.

In particular, the ESSA significantly modified the accountability requirements of the ESEA. Whereas the ESEA, as amended by the NCLB, required a State educational agency (SEA) to hold schools accountable based on results on statewide assessments and one other academic indicator, the ESEA, as amended by the ESSA, requires each SEA to have an accountability system that is State-determined and based on multiple measures, including at least one measure of school quality or student success and, at a State’s discretion, a measure of student growth. The ESSA also significantly modified the requirements for differentiating among schools and the basis on which schools must be identified for further comprehensive or targeted support and improvement. Additionally, the ESEA, as amended by the ESSA, no longer requires a particular sequence of escalating interventions in title I schools that are identified and continue to fail to make adequate yearly progress (AYP). Instead, it gives SEAs and local educational agencies (LEAs) discretion to determine the evidence-based interventions that are appropriate to address the needs of identified schools.

In addition to modifying the ESEA requirements for State accountability systems, the ESSA also modified and expanded upon the ESEA requirements

for State and LEA report cards. The ESEA, as amended by the ESSA, continues to require that report cards be concise, presented in an understandable and uniform format, and, to the extent practicable, in a language that parents can understand, but now also requires that they be developed in consultation with parents and that they be widely accessible to the public. The ESEA, as amended by the ESSA, also requires that report cards include certain information that was not required to be included on report cards under the ESEA, as amended by the NCLB, such as information regarding per-pupil expenditures of Federal, State, and local funds; the number and percentage of students enrolled in preschool programs; where available, the rate at which high school graduates enroll in postsecondary education programs; and information regarding the number and percentage of English learners achieving English language proficiency. In addition, the ESEA, as amended by the ESSA, requires that report cards include certain information for subgroups for which information was not previously required to be reported, including homeless students, students in foster care, and students with a parent who is a member of the Armed Forces.

Further, the ESEA, as amended by the ESSA, authorizes an SEA to submit, if it so chooses, a consolidated State plan or consolidated State application for covered programs, and authorizes the Secretary to establish, for each covered program, the descriptions, information, assurances, and other material required to be included in a consolidated State plan or consolidated State application.

We are proposing these regulations to provide clarity and support to SEAs, LEAs, and schools as they implement the ESEA, as amended by the ESSA—particularly, the ESEA requirements regarding accountability systems, State and LEA report cards, and consolidated State plans—and to ensure that key requirements in title I of the ESEA, as amended by the ESSA, are implemented consistent with the purpose of the law: “to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”

*Summary of the Major Provisions of This Regulatory Action:* As discussed in greater depth in the *Significant Proposed Regulations* section of this document, the proposed regulations would:

- Establish requirements for accountability systems under section 1111(c) and (d) of the ESEA, as amended by the ESSA, including requirements regarding the indicators

used to annually meaningfully differentiate all public schools, the identification of schools for comprehensive or targeted support and improvement, and the development and implementation of improvement plans, including evidence-based interventions, in schools that are so identified;

- Establish requirements for State and LEA report cards under section 1111(h) of the ESEA, as amended by the ESSA, including requirements regarding the timeliness and format of such report cards, as well as requirements that clarify report card elements that were not required under the ESEA, as amended by the NCLB; and

- Establish requirements for consolidated State plans under section 8302 of the ESEA, as amended by the ESSA, including requirements for the format of such plans, the timing of submission of such plans, and the content to be included in such plans.

Please refer to the *Significant Proposed Regulations* section of this preamble for a detailed discussion of the major provisions contained in the proposed regulations.

**Costs and Benefits:** The Department believes that the benefits of this regulatory action outweigh any associated costs to SEAs and LEAs, which would be financed with grant funds. These benefits would include a more flexible, less complex and less costly accountability framework for the implementation of the ESEA that respects State and local decision-making; the efficient and effective collection and dissemination of a wide range of education-related data that would inform parents, families, and the public about the performance of their schools and support State and local decision-making; and an optional, streamlined consolidated application process that would promote the comprehensive and coordinated use of Federal, State, and local resources to improve educational outcomes for all students and all subgroups of students. Please refer to the *Regulatory Impact Analysis* section of this document for a more detailed discussion of costs and benefits. Consistent with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this action is economically significant and, thus, is subject to review by the OMB under the order.

**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 Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could refine estimates of the rule's impacts, reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

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 3C106, 400 Maryland Ave. SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Particular Issues for Comment:** We request comments from the public on any issues related to these proposed regulations. However, we particularly request the public to comment on, and provide additional information regarding, the following issues. Please provide a detailed rationale for each response you make.

- Whether the suggested options for States to identify “consistently underperforming” subgroups of students in proposed § 200.19 would result in meaningful identification and be helpful to States; whether any additional options should be considered; and which options, if any, in proposed § 200.19 should not be included or should be modified. (§ 200.19)

- Whether we should include additional or different options, beyond those proposed in this NPRM, to support States in how they can meaningfully address low assessment participation rates in schools that do not assess at least 95 percent of their students, including as part of their State-designed accountability system and as part of plans schools develop and implement to improve, so that parents and teachers have the information they need to ensure that all students are making academic progress. (§ 200.15)

- Whether, in setting ambitious long-term goals for English learners to achieve English language proficiency, States would be better able to support English learners if the proposed regulations included a maximum State-determined timeline (e.g., a timeline

consistent with the definition of “long-term” English learners in section 3121(a)(6) of the ESEA, as amended by the ESSA), and if so, what should the maximum timeline be and what research or data supports that maximum timeline. (§ 200.13)

- Whether we should retain, modify, or eliminate in the title I regulations the provision allowing a student who was previously identified as a child with a disability under section 602(3) of the Individuals with Disabilities Education Act (IDEA), but who no longer receives special education services, to be included in the children with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator, and, if so, whether such students should be permitted in the subgroup for up to two years consistent with current title I regulations, or for a shorter period of time. (§ 200.16)

- Whether we should standardize the criteria for including children with disabilities, English learners, homeless children, and children who are in foster care in their corresponding subgroups within the adjusted cohort graduation rate, and suggestions for ways to standardize these criteria. (§ 200.34)

**Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:** Upon request, we will provide an appropriate accommodation or auxiliary aid 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 accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

## Background

On December 10, 2015, President Barack Obama signed the ESSA, which reauthorizes the ESEA, into law. Through the reauthorization, the ESSA made significant changes to the ESEA, including significant changes to title I of the ESEA. In particular, the ESSA significantly modified the accountability requirements of the ESEA, and modified and expanded upon the ESEA requirements for State and LEA report cards.

Further, the ESEA, as amended by the ESSA, authorizes an SEA to submit, if it so chooses, a consolidated State plan or consolidated State application for covered programs and authorizes the Secretary to establish, for each covered program, the descriptions, information, assurances, and other material required

to be included in a consolidated State plan or consolidated State application.

The Department is proposing these regulations to provide clarity and support to SEAs, LEAs, and schools as they implement the ESEA requirements regarding accountability systems, State and LEA report cards, and consolidated State plans. The proposed regulations are further described under the *Significant Proposed Regulations* section of this NPRM.

### Public Participation

On December 22, 2015, the Department published a request for information in the **Federal Register** soliciting advice and recommendations from the public on the implementation of title I of the ESEA, as amended by ESSA. We received 369 comments. We also held two public meetings with stakeholders—one on January 11, 2016, in Washington, DC and one on January 18, 2016, in Los Angeles, California—at which we heard from over 100 speakers, regarding the development of regulations, guidance, and technical assistance. In addition, Department staff have held more than 100 meetings with education stakeholders and leaders across the country to hear about areas of interest and concern regarding implementation of the new law.

### Significant Proposed Regulations

The Secretary proposes to amend the regulations implementing programs under title I of the ESEA (part 200) and to amend the ESEA general regulations to include requirements for the submission of State plans under ESEA programs, including optional consolidated State plans (part 299).

To implement the changes made to the ESEA by the ESSA, we propose to remove certain sections of the current regulations and replace those regulations, where appropriate, with the proposed regulations. Specifically, we are proposing to—

- Remove and reserve § 200.7;
- Remove §§ 200.12 to 200.22 of the current regulations, replace them with proposed §§ 200.12 to 200.22, and add proposed §§ 200.23 and 200.24;
- Remove §§ 200.30 to 200.42 of the current regulations and replace them with proposed §§ 200.30 to 200.37; and
- Add proposed §§ 299.13 to 299.19.

We discuss the proposed substantive changes by section. The section numbers in the headings of the following discussion are the section numbers in the proposed regulations. Generally, we do not address proposed changes that are technical or otherwise minor in effect.

### Section 200.12 Single Statewide Accountability System

*Statute:* Section 1111(c) of the ESEA, as amended by the ESSA, requires that each State plan describe a single statewide accountability system for all public schools that is based on the challenging State academic standards for reading/language arts and mathematics, described in section 1111(b)(1), in order to improve student academic achievement and school success. These provisions take effect beginning with the 2017–2018 school year, as described in section 5(e)(1)(B) of the ESSA. The system must also include the following key elements:

- Long-term goals and measurements of interim progress, in accordance with section 1111(c)(4)(A);
- Indicators, in accordance with section 1111(c)(4)(B);
- Annual meaningful differentiation of all public schools, in accordance with section 1111(c)(4)(C); and
- Identification of schools to implement comprehensive or targeted support and improvement plans, in accordance with section 1111(c)(4)(D) and (d)(2)(A)(i).

Section 1111(c) also requires that State systems include long-term goals and measurements of interim progress for all students and specific subgroups of students, indicators that are applied to all students and specific subgroups of students, and a system of annual meaningful differentiation that is based on all indicators in the system, for all students and specific subgroups of students; that a State determine a minimum number of students necessary to carry out any title I, part A requirements that require disaggregation of information by each subgroup of students; and that the State annually measure the academic achievement of at least 95 percent of all students and 95 percent of the students in each subgroup of students on the State's reading/language arts and mathematics assessments required under section 1111(b)(2). Section 1111(c)(5) also specifies that accountability provisions for public charter schools must be overseen in accordance with State charter school law. Finally, section 1111(d) requires States to ensure LEAs and schools develop and implement school improvement plans in schools that are identified for comprehensive or targeted support and improvement by the State accountability system.

*Current Regulations:* Section 200.12 of the title I regulations provides a high-level summary of the statutory accountability requirements in the ESEA, as amended by the NCLB, which

took effect for the 2002–2003 school year.

*Proposed Regulations:* Proposed § 200.12 would replace the current regulations with regulations that summarize the requirements for accountability systems in the ESEA, as amended by the ESSA. The proposed regulations would require that each State plan describe that the State has developed and will implement a single statewide accountability system to improve student academic achievement. The proposed regulations would also require a State's accountability system to: Be based on the challenging State academic standards and academic assessments; include all public schools in the State, including public charter schools; and improve student academic achievement and school success. In addition, the proposed regulations include the general requirements for States to meet the key elements of accountability and improvement systems consistent with the ESEA, as amended by the ESSA, which are described in greater detail in subsequent sections of the proposed regulations:

- Long-term goals and measurements of interim progress under proposed § 200.13;
- Indicators under proposed § 200.14;
- Inclusion of all students and each subgroup of students, and all public elementary and secondary schools consistent with proposed §§ 200.15 through 200.17;
- Annual meaningful differentiation of schools under proposed § 200.18;
- Identification of schools for comprehensive and targeted support and improvement under proposed § 200.19; and
- The process for ensuring development and implementation of comprehensive and targeted support and improvement plans, including evidence-based interventions, consistent with proposed §§ 200.21 through 200.24.

Finally, proposed § 200.12 would include the statutory requirement that the ESEA's accountability provisions for public charter schools be overseen in accordance with State charter school law.

*Reasons:* The ESEA, as amended by the ESSA, significantly changes the requirements for school accountability and improvement systems from those previously included in the ESEA, as amended by the NCLB. In particular, the ESSA eliminates the requirement for schools, LEAs, and States to make AYP and replaces it with requirements for new statewide accountability systems that are based on different requirements for all public schools. These

requirements do not apply to private schools, including private schools that receive title I equitable services. With the new school accountability and improvement provisions under the ESSA set to take effect for the 2017–2018 school year, it is critical for the Department to update the regulations to reflect these changes and provide clarity for States in how to implement them. In effect, proposed § 200.12 would serve as a table of contents for each required component of the accountability system, which would be described in greater detail in subsequent sections of the proposed regulations.

These clarifications are necessary to ensure that States clearly understand the fundamental components of the new accountability systems under the ESSA that will take effect for the 2017–2018 school year, and that a description of each such component will be required in their State plans submitted to the Department.

#### *Section 200.13 Long-Term Goals and Measurements of Interim Progress*

**Statute:** Section 1111(c)(4)(A)(i)(I) and (c)(4)(A)(ii) of the ESEA, as amended by the ESSA, requires each State to establish ambitious long-term goals, and measurements of interim progress toward those goals, for specific indicators, for all students and for each subgroup of students described in section 1111(c)(2): Economically disadvantaged students, students from major racial and ethnic groups, children with disabilities, and English learners. These goals and measurements of interim progress must be set, at a minimum, for improved academic achievement (as measured by proficiency on State assessments in reading/language arts and mathematics), for improved high school graduation rates (as measured by the four-year adjusted cohort graduation rate), and for increases in the percentage of English learners making progress toward English language proficiency (as measured by the English language proficiency assessments required in section 1111(b)(2)(G)) within a State-determined timeline. In addition, States may establish long-term goals and measurements of interim progress for graduation rates as measured by extended-year adjusted cohort graduation rates, but such goals and interim measurements must be more rigorous than those set based on the four-year adjusted cohort graduation rate.

Section 1111(c)(4)(A)(i)(II) also requires that the State's ambitious long-term goals for achievement and graduation rates use the same multi-year

length of time for all students and each subgroup of students. This is explained further below.

Finally, section 1111(c)(4)(A)(i)(III) specifies that a State's goals for subgroups of students must take into account the improvement needed among subgroups that must make greater progress in order to close achievement and graduation rate gaps in the State.

**Current Regulations:** Various sections of the current title I regulations describe the role of goals and annual measurable objectives (AMOs) in the State accountability system required by the ESEA, as amended by the NCLB, and require each State to establish a definition of AYP. These sections essentially repeat the NCLB, with the exception of § 200.19 regarding the four-year adjusted cohort graduation rate, which was added to the title I regulations in 2008.

**Proposed Regulations:** Proposed § 200.13 would primarily incorporate into regulation the statutory requirements under the ESEA, as amended by the ESSA, for State-designed long-term goals and measurements of interim progress for academic achievement, graduation rates, and progress in achieving English language proficiency. The proposed regulations also would clarify certain provisions to support effective State and local implementation of the statutory requirements.

#### *Goals for Academic Achievement and Graduation Rates*

Proposed § 200.13 would require each State to—

- Establish ambitious long-term goals and measurements of interim progress for academic achievement that are based on grade-level proficiency on the State's academic assessments and set separately for reading/language arts and mathematics;
- In setting long-term goals and measurements of interim progress for academic achievement, apply the same high standards of academic achievement to all students and each subgroup of students, except students with the most significant cognitive disabilities who are assessed based on alternate academic achievement standards, consistent with section 1111(b)(1);
- Establish ambitious long-term goals and measurements of interim progress for graduation rates that are based on the four-year adjusted cohort graduation rate and, if a State chooses to use an extended-year rate as part of its Graduation Rate indicator under proposed § 200.14, the extended-year adjusted cohort graduation rate, except

that goals based on the extended-year rate must be more rigorous than goals based on the four-year rate;

- Set long-term goals and measurements of interim progress for academic achievement and graduation rates for all students and separately for each subgroup of students that expect greater rates of improvement for subgroups that need to make more rapid progress to close proficiency and graduation rate gaps in the State; and
- Use the same multi-year timeline in setting long-term goals for academic achievement and graduation rates for all students and for each subgroup (*e.g.*, if the goal for all students is to improve academic achievement by a certain percentage over 10 years, then the goal for children with disabilities must also be set over 10 years, even if the subgroup is expected to improve by a greater percentage relative to all students over that timeframe).

#### *Goals for Progress in Achieving English Language Proficiency*

The proposed regulations would require each State to—

- Establish ambitious long-term goals and measurements of interim progress for English learners toward attaining English language proficiency, as measured by the State's English language proficiency assessment, that set expectations for each English learner to make annual progress toward attaining English language proficiency and to attain English language proficiency; and
- Determine the State's long-term goals and measurements of interim progress for English learners by developing a uniform procedure for setting such goals and measurements of interim progress that would be applied consistently to all English learners in the State, must take into account the student's English language proficiency level, and may also consider one or more of the following student-level factors at the time of a student's identification as an English learner: (1) Time in language instruction educational programs; (2) grade level; (3) age; (4) Native language proficiency level; and (5) limited or interrupted formal education, if any.

**Reasons:** The proposed regulations would primarily replace obsolete provisions relating to goals and progress measures within State accountability systems to reflect changes required by the ESEA, as amended by the ESSA. In addition, the proposed regulations would clarify requirements related to goals for academic achievement, particularly for students with the most significant cognitive disabilities, as well

as goals for English learners toward attaining English language proficiency.

#### Goals for Academic Achievement and Graduation Rates

Under section 1111(b)(2)(B)(ii), State assessments must provide information to students, parents, and educators about whether individual students are performing at their grade level. This determination provides valuable information about whether a student is receiving the support he or she needs to meet the challenging State academic standards and is on track to graduate ready to succeed in college and career, and if not, to help identify areas in which the student would benefit from additional support. This information also helps States and LEAs identify statewide proficiency gaps when establishing the State's goals and measurements of interim progress, as required under section 1111(c)(4)(A)(i)(III). Goals based on grade-level proficiency would provide consistency across the accountability system, as the statute requires the Academic Achievement indicator described in section 1111(c)(4)(B)(i)(I) to be based on a measure of proficiency against the challenging State academic standards. Therefore, the proposed regulations would clarify that the long-term goals a State establishes must be based on a measure of grade-level proficiency on the statewide assessments required under section 1111(b)(2) and must be set separately for reading/language arts and mathematics.

Section 1111(b)(1) also requires that all students be held to the same challenging State academic standards, except for students with the most significant cognitive disabilities who are assessed based on alternate academic achievement standards, as permitted under section 1111(b)(2)(D)(i). To ensure that all students are treated equitably and expected to meet the same high standards, and that all schools are held accountable for meeting these requirements, proposed § 200.13 would clarify that long-term goals must be based on the same academic achievement standards and definition of "proficiency" for all students, with the exception of students with the most significant cognitive disabilities who take an alternate assessment aligned with alternate academic achievement standards.

Finally, to provide relevant, meaningful information to districts, schools, and the public about the level of performance and improvement that is expected, proposed § 200.13 would require a State to set long-term goals and measurements of interim progress for

graduation rates that are based on the four-year adjusted cohort graduation rate, as well as the extended-year adjusted cohort graduation rate if such a rate were used in the State's Graduation Rate indicator described in section 1111(c)(4)(B)(iii). Given that the graduation rate could impact whether a school is identified for support and improvement, and related interventions, it is critical to require the State to set long-term goals and measurements of interim progress for this measure in order to establish clear expectations and support all schools in the State in increasing the percentage of students graduating high school.

#### Goals for Progress in Achieving English Language Proficiency

Because the requirement for progress in achieving English language proficiency goals has been added to title I in the ESEA, as amended by the ESSA, we propose to explain and clarify how States can meet this requirement in proposed § 200.13. For English learners to succeed in meeting the challenging State academic standards, it is critical for these students to attain proficiency in speaking, listening, reading, and writing in English, as recognized in section 1111(b)(1)(F), including the ability to successfully make academic progress in classrooms where the language of instruction is English, as recognized in the definition of "English learner" in section 8101(20). For these reasons, proposed § 200.13 would clarify that States' long-term goals must include both annual progress toward English language proficiency and actual attainment of English language proficiency for all English learners.

Recent data have highlighted the growing numbers of school-aged English learners, particularly in States and LEAs with relatively little experience in serving such students previously. The Census Bureau's American Community Survey (ACS) data from 2013 show that California, Florida, Illinois, New York, and Texas enroll 60 percent of the Nation's English learners, but the growth rate in the English learner population in other States has exceeded that of these five. For example, ACS data show that from 2010 to 2013, the English learner population increased by 21 percent in West Virginia, 13 percent in Hawaii and North Dakota, and 12 percent in Iowa. In addition, some States have experienced large increases of certain English learner subgroups over a short period of time. Alaska, the District of Columbia, New Hampshire, Oklahoma, South Dakota, Iowa, Maine, and Nebraska all experienced more than a 16-percent increase in their immigrant

population during the 2010 to 2013 timeframe.

Given the diversity of the English learner population, illustrated in the examples above, a reasonable timeframe for schools to support one English learner in attaining proficiency in English may be too rigorous or too lenient an expectation for another English learner. Setting the same long-term goals and measurements of interim progress for all English learners in the State may fail to account for these differences in the English learner population and would result in goals that are inappropriate for some students. Furthermore, the time it takes an English learner to attain proficiency can be affected by multiple factors, such as age, level of English proficiency, and educational experiences in a student's native language.<sup>1</sup> Thus, proposed § 200.13(c) would require States to consider students' English language proficiency level in setting goals and measurements of interim progress and allow the consideration of additional research-based student factors. The list of student characteristics in proposed § 200.13 is based not only on research but also on input from grantees and experts during administration of the former title III requirement for annual measurable achievement objectives (AMAOs). The ESEA, as amended by the NCLB, required that those AMAOs (which included progress toward and attainment of English language proficiency) reflect the amount of time an individual child had been enrolled in a language instruction educational program. Researchers, however, have found that the other factors outlined in proposed § 200.13 are important factors that also should be included in setting goals for progress or proficiency.<sup>2</sup>

For these reasons, proposed § 200.13(c) would require each State to establish a uniform procedure for setting long-term goals and measurements of interim progress for English learners

<sup>1</sup> See, for example, Collier, V.P. (1995). "Acquiring a second language for school." *Directions in Language & Education*, 1(4); García-Vázquez, E., Vázquez, L.A., López, I.C., & Ward, W. (1997). "Language proficiency and academic success: Relationships between proficiency in two languages and achievement among Mexican-American students." *Bilingual Research Journal*, 21(4), 334–347; and Center for Public Education (2007). "Research Review: What research says about preparing English language learners for academic success," pp. 6–7.

<sup>2</sup> See, for example, Cook, G., Linquanti, R., Chinen, M., & Jung, H. (2012). "National evaluation of Title III implementation supplemental report—Exploring approaches to setting English language proficiency performance criteria and monitoring English learner progress." U.S. Department of Education, Office of Planning, Evaluation, and Policy Development, Policy and Program Studies Service, pp. 68–69.

that can be applied consistently and equitably to all English learners and schools with such students for accountability purposes, and that consider a student's English language proficiency level, as well as additional research-based student characteristics at a State's discretion (*i.e.*, time in language instruction educational programs, grade level, age, native language proficiency level, and limited or interrupted formal education) in determining the most appropriate timeline and goals for attaining English language proficiency for each English learner, or category of English learner. Though the State's procedure must be consistently applied for all English learners and consider the same student-level characteristics determined by the State, this approach would allow differentiation of goals for an individual English learner, or for categories of English learners that share similar characteristics, based on English language proficiency level, as well as factors such as grade level and educational background, thereby recognizing the varied needs of the English learner population.

Finally, proposed § 200.13 would require a State's long-term goals to expect each English learner to attain English language proficiency within a period of time after the student's identification as an English learner. This period of time could be informed by existing academic research on the typical time necessary for English learners to attain English language proficiency,<sup>3</sup> and we encourage States to consider the requirement in section 3121(a)(6) of the ESEA, as amended by the ESSA, that subgrantees receiving title III funds report the number and percentage of "long-term" English learners (*i.e.*, those that do not attain English language proficiency within five years of initial classification), in order to align the related title I and title III requirements. The long-term goals established by each State would not

change the SEA and LEA's obligation to assist individual English learners in overcoming language barriers in a reasonable period of time. Given these considerations, we are particularly interested in receiving comments on whether, in setting ambitious long-term goals to achieve English language proficiency, States would be better able to support English learners if the proposed regulations include a maximum State-determined timeline, and if so, what the maximum timeline should be—including any research or data to support the timeline—in order to ensure that State accountability systems effectively promote progress in attaining English language proficiency for these students.

#### *Section 200.14 Accountability Indicators*

**Statute:** Section 1111(c)(4)(B) of the ESEA, as amended by the ESSA, requires each State to include, at a minimum, four distinct indicators of student performance, measured for all students and separately for each subgroup of students, for each school in its statewide accountability system. Although five types of indicators are described in the statute, only four indicators must apply to each public school in a State because two of the required indicators apply only to schools in certain grade spans.

- For all public schools in the State, section 1111(c)(4)(B)(i) requires an indicator of academic achievement, based on the long-term goals established under section 1111(c)(4)(A), that measures proficiency on the statewide assessments in reading/language arts and mathematics required under section 1111(b)(2)(B)(v)(I). At the State's discretion, this indicator may also include a measure of student growth on such assessments, for high schools only.

- For elementary and middle schools in the State, section 1111(c)(4)(B)(ii) requires an indicator that measures either student growth or another valid and reliable statewide academic indicator that allows for meaningful differentiation in school performance.

- For all high schools in the State, section 1111(c)(4)(B)(iii) requires an indicator, based on the long-term goals established under section 1111(c)(4)(A), that measures the four-year adjusted cohort graduation rate, and, at the State's discretion, the extended-year adjusted cohort graduation rate.

- For all public schools in the State, section 1111(c)(4)(B)(iv) requires an indicator measuring progress in achieving English language proficiency, within a State-determined timeline, for all English learners. This indicator must

be measured using the English language proficiency assessments required under section 1111(b)(2)(G), for all English learners in each of grades 3 through 8, and in the grade in which English learners are assessed to meet the requirements of section 1111(b)(2)(B)(v)(I) to assess students once in high school.

- For all public schools in the State, section 1111(c)(4)(B)(v) requires at least one valid, reliable, and comparable indicator of school quality or student success. Such an indicator may include measures of student or educator engagement, student access to and completion of advanced coursework, postsecondary readiness, school climate and safety, or any other measure a State chooses that meets the requirements of section 1111(c)(4)(B)(v). Section 1111(c)(4)(B)(v)(I)(aa) requires that any school quality or student success indicator chosen by the State allow for meaningful differentiation of school performance, and section 1111(c)(4)(B)(v)(I)(bb) requires that the school quality or success indicator(s) be valid, reliable, comparable, and statewide (except that such indicator(s) may vary for each grade span).

**Current Regulations:** Various sections of the current title I regulations describe the measures used in the State accountability systems required by the ESEA, as amended by the NCLB.

**Proposed Regulations:** Proposed § 200.14 would clarify the statutory requirements in the ESSA for States to include, at a minimum, four distinct indicators for each school that measure performance for all students and separately for each subgroup of students under proposed § 200.16(a)(2).

Proposed § 200.14(a)(2) would clarify that each State must use the same measures within each indicator for all schools, except that States may vary the measures within the Academic Progress indicator and the School Quality or Student Success indicator or indicators by grade span as would be described in proposed § 200.14(c)(2). Proposed § 200.14 also would describe each of the five indicators that are required, at a minimum, as part of a State's accountability system under section 1111(c) of the ESEA, as amended by the ESSA.

#### *Academic Achievement Indicator*

Proposed § 200.14(b)(1) would:

- Require, for all schools, the Academic Achievement indicator to equally measure grade-level proficiency on the reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I);

<sup>3</sup> See, for example, Hakuta, K., Goto Butler, Y., & Witt, D. (2000). "How long does it take English learners to attain proficiency?" University of California Linguistic Minority Research Institute Policy Report 2000-1; MacSwan, J., & Pray, L. (2005). "Learning English bilingually: Age of onset of exposure and rate of acquisition among English language learners in a bilingual education program." *Bilingual Research Journal*, 29(3), 653-678; Motamedi, J.G. (2015). "Time to reclassification: How long does it take English language learners in the Washington Road Map school districts to develop English proficiency?" U.S. Department of Education, Institute of Education Sciences; and Slavin, R.E., Madden, N.A., Calderón, M.E., Chamberlain, A., & Hennessy, M. (2011). "Reading and language outcomes of a five-year randomized evaluation of transitional bilingual education." *Educational Evaluation and Policy Analysis*, 33(1), 47-58.

- Reiterate that the indicator must include the performance of at least 95 percent of all students and 95 percent of all students in each subgroup consistent with proposed § 200.15; and

- Clarify that, for high schools, this indicator may also measure, at the State's discretion, student growth based on the reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I).

#### Academic Progress Indicator

Proposed § 200.14(b)(2) would require, for all elementary and middle schools, the Academic Progress indicator to measure either student growth based on the reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I), or another academic measure that meets the requirements of proposed § 200.14(c).

#### Graduation Rate Indicator

Proposed § 200.14(b)(3) would:

- Require, for all high schools, the Graduation Rate indicator to measure the four-year adjusted cohort graduation rate; and
- Allow States to also measure the extended-year adjusted cohort graduation rate as part of the Graduation Rate indicator.

#### Progress in Achieving English Language Proficiency Indicator

Proposed § 200.14(b)(4) would:

- Require, for all schools, the Progress in Achieving English Language Proficiency indicator to be based on English learner performance on the English language proficiency assessment required under section 1111(b)(2)(G) in each of grades 3 through 8 and in the grades for which English learners are assessed in high school to meet the requirements of section 1111(b)(2)(B)(v)(I);

- Require that the Progress in Achieving English Language Proficiency indicator take into account a student's English language proficiency level and, at a State's discretion, additional student-level characteristics of English learners in the same manner used by the State under proposed § 200.13; use objective and valid measures of student progress such as student growth percentiles (although the indicator may also include a measure of English language proficiency); and align with the State-determined timeline for attaining English language proficiency under proposed § 200.13.

#### School Quality or Student Success Indicators

Proposed § 200.14(b)(5) would:

- Require, for all schools, the School Quality or Student Success indicator or indicators to meet the requirements of proposed § 200.14(c); and

- Reiterate the statutory language that the indicator or indicators may differ by each grade span and may include one or more measures of: (1) Student access to and completion of advanced coursework, (2) postsecondary readiness, (3) school climate and safety, (4) student engagement, (5) educator engagement, or any other measure that meets the requirements in the proposed regulations.

#### Requirements for Indicator Selection

Additionally, under proposed § 200.14(c), a State would be required to ensure that each measure it selects to include within an indicator:

- Is valid, reliable, and comparable across all LEAs in the State;
- Is calculated the same for all schools across the State, except that the measure or measures selected within the indicator of Academic Progress or any indicator of School Quality or Student Success may vary by grade span;
- Can be disaggregated for each subgroup of students; and
- Includes a different measure than the State uses for any other indicator.

Under proposed § 200.14(d), a State would be required to ensure that each measure it selects to include as an Academic Progress or School Quality or Student Success indicator is supported by research finding that performance or progress on such measure is likely to increase student academic achievement or, for measures used within indicators at the high school level, graduation rates. Finally, under proposed § 200.14(e), a State would be required to ensure that each measure it selects to include as an Academic Progress or School Quality or Student Success indicator aids in the meaningful differentiation among schools under proposed § 200.18 by demonstrating varied results across all schools.

*Reasons:* Given the new statutory requirements in the ESEA, as amended by the ESSA, and the increased role for States to establish systems of annual meaningful differentiation, we propose to revise the current regulations to reflect the new requirements and clarify how States may establish and measure each indicator in order to ensure these indicators thoughtfully inform annual meaningful differentiation of schools (described further in proposed § 200.18).

Although the statute provides a brief description of each indicator, States will need additional guidance as they consider how to design and implement school accountability systems that will

meet their intended purpose of improving student academic achievement and school success. Because the indicators are used to identify schools for comprehensive and targeted support and improvement, including interventions to support improved student outcomes in these schools, it is essential to ensure that the requirements for each indicator are clear so that differentiation and identification of schools is unbiased, accurate, and consistent across the State.

Proposed § 200.14(a) would reinforce and clarify the statutory requirement that all indicators must measure performance for all students and separately for each subgroup of students, and that the State must use the same measures within each indicator for all schools, except for the Academic Progress indicator and the indicator(s) of School Quality or Student Success, which may use different measures among elementary, middle, and high schools. These proposed requirements would ensure that indicators include all students similarly across the State, including historically underserved populations, so that all students are held to the same high expectations. Further, these proposed requirements would ensure the indicators remain comparable across the State in order to promote fairness and validity, as schools will be held accountable on the basis of their students' performance on each indicator.

While the proposed regulations would require all States to include all of the required indicators, disaggregated by each subgroup, for annual meaningful differentiation of schools in the 2017–2018 school year, including the new indicators under the ESSA (*i.e.*, Academic Progress, Progress in Achieving English Language Proficiency, and School Quality or Student Success indicators), we recognize that some States may want to update their accountability systems as new data become available.

Accordingly, the proposed regulations would not preclude States from adding measures to their accountability systems over time that they currently do not collect or are unable to calculate, or from replacing measures over time, if particular measures of interest are not ready for the 2017–2018 school year, or if the State would like to gather additional input prior to including these measures in the accountability system for purposes of differentiation and identification of schools.

#### Academic Achievement Indicator

Under section 1111(b)(2)(B)(ii) of the ESEA, as amended by the ESSA, State



assessments must provide information about whether individual students are performing at their grade level. This provides valuable information to students, parents, educators, and the public about whether all students are receiving the support they need to meet the challenging State academic standards and are on track to graduate college- and career-ready. It also ensures that students needing extra support to meet the challenging State academic standards can be identified—especially as school performance on the Academic Achievement indicator would be a substantial part of annual meaningful differentiation of schools under proposed § 200.18 and identification of low-performing schools, including those with low-performing subgroups, for improvement under proposed § 200.19. Accordingly, it is important to clarify that the measure of proficiency on those assessments included in the Academic Achievement indicator must reflect this grade-level determination, and that reading/language arts and mathematics must be equally considered within the indicator.

#### Progress in Achieving English Language Proficiency Indicator

In order for English learners to succeed in meeting the challenging State academic standards, it is critical for them to attain proficiency in speaking, listening, reading, and writing in English, as recognized in section 1111(b)(1)(F), including academic English proficiency (*i.e.*, the ability to successfully achieve in classrooms where the language of instruction is English) as recognized in research and in the definition of “English learner” in section 8101(20).<sup>4</sup> For these reasons, proposed § 200.13 would clarify that States’ long-term goals should include both attainment of English language proficiency and annual progress toward English language proficiency for all English learners.

Similarly, proposed § 200.14(b)(4) would clarify how a State measures progress in achieving English language proficiency for all English learners for annual meaningful differentiation. The proposed regulation would provide States flexibility to develop a specific measure for this purpose, while ensuring that States use objective, valid,

and consistent measures of student progress. Critically, the proposed regulations would require an objective and valid measure that English learners are attaining, or are on track to attain, English language proficiency in a reasonable time period, consistent with the State-determined timeline in proposed § 200.13. As the Progress in Achieving English Language Proficiency indicator would receive substantial weight in annual meaningful differentiation under proposed § 200.18 and could affect which schools are identified for support, it is important for States to design this indicator in ways that are valid and reliable and provide an accurate determination of English learners’ progress toward achieving proficiency in English. Finally, the indicator chosen by the State must include a student’s English language proficiency level, as well as additional student characteristics that are used, at a State’s discretion, in the English learner-specific long-term goals and measurements of interim progress, for the reasons discussed previously in proposed 200.13(c) and to provide consistency across the components of State accountability systems.

#### Requirements for Indicator Selection

Proposed § 200.14(c) would reiterate that all indicators included in the accountability system must be valid, reliable, and comparable across all LEAs in the State, and that each included measure must be calculated in the same way for all schools. It would also prevent a State from using the same indicators more than once. For example, a State must choose a different indicator to measure school quality or student success than it uses to measure academic achievement.

Proposed § 200.14(e) would require that the Academic Progress and School Quality or Student Success indicator produce varied results across all schools in order to support the statutory requirements for meaningful differentiation and long-term student success. These proposed requirements are designed to ensure that the indicators provide meaningful information about a school’s performance, enhancing the information provided by other indicators and improving the ability of the system to differentiate between schools. In this way, the Academic Progress and School Quality or Student Success indicators can provide a more holistic picture of a school’s performance and, when selected thoughtfully, support a State in meeting the statutory requirement that these indicators allow for “meaningful differentiation.” The proposed

parameters would help improve the validity of annual meaningful differentiation and support States’ identification of schools most in need of support and improvement. If a State chose an indicator that led to consistent results across schools—such as average daily attendance, which is often quite high even in the lowest-performing schools—it would not allow states to meaningfully differentiate between schools for the purposes of identifying schools in need of comprehensive and targeted support and improvement.

Finally, proposed § 200.14(d) would ensure that a State selects indicators of Academic Progress and School Quality or Student Success that are supported by research showing that performance or progress on such measures is positively related to student achievement or, in the case of measures used within indicators at the high school level, graduation rates. For example, a State might include at least one of the following School Quality or Student Success indicators that examine, for all students and disaggregated for each subgroup of students:

- “Student access to and completion of advanced coursework” through a measure of advanced mathematics course-taking (*e.g.*, the percentage of middle school students enrolled in algebra, or of high school students enrolled in calculus);
- “Postsecondary readiness” through a measure of college enrollment following high school graduation or the rate of non-remedial postsecondary courses taken;
- “School climate and safety” through a robust, valid student survey that measures multiple domains (*e.g.*, student engagement, safety, and school environment); or
- “Student engagement” through a measure of chronic absenteeism based on the number of students that miss a significant portion (*e.g.*, 15 or more school days or 10 percent or more of total school days) of the school year.

Further, since measures of “postsecondary readiness” may not be available as an indicator in elementary schools, a State could consider using an analogous measure in its accountability system, such as “kindergarten readiness” or another measure that would capture important outcomes or learning experiences in the early grades.

These requirements would support the purpose of title I—to “provide all children significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps”—by requiring States to use measures that are

<sup>4</sup> See, for example, Halle, T., Hair, E., Wandner, L., McNamara, M., and Chien, N. (2012). “Predictors and outcomes of early versus later English language proficiency among English language learners.” *Early Childhood Research Quarterly* Volume 27, Issue 1; and Graham, J. (1987). “English language proficiency and the prediction of academic success.” *TESOL Quarterly*, Vol. 21, No. 3, pp. 505–521.



likely to close achievement gaps and are related to improvements in critical student outcomes. It would also create consistency across components of the accountability system described in proposed § 200.12; the Academic Progress and School Quality or Student Success indicators would both provide additional information to help a State differentiate between, and identify, schools in a valid and reliable way, and also be relevant to its other indicators and support the State's efforts to attain its long-term goals.

*Section 200.15 Participation in Assessments and Annual Measurement of Achievement*

*Statute:* Section 1111(c)(4)(E) of the ESEA, as amended by the ESSA, requires each State, for the purpose of school accountability determinations, to measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the annual statewide assessments in reading/language arts and mathematics required by section 1111(b)(2)(B)(v)(I). The statute further ensures that this requirement is taken into account when determining proficiency on the Academic Achievement indicator by specifying that the denominator used for such calculations must include at least 95 percent of all students and 95 percent of students in each subgroup enrolled in the school. Each State also must provide a clear and understandable explanation of how the participation rate requirement will be factored into its accountability system.

*Current Regulations:* Section 200.20(c)(1) of the current regulations specifies that, for an LEA or school to make AYP, not less than 95 percent of all students and 95 percent of the students in each subgroup who are enrolled in the LEA or school must take the statewide academic assessments. Title I schools that fail to make AYP due to the participation rate requirement can be identified as schools in improvement. Section 200.20(c)(2) of the current regulations further states that this 95 percent participation requirement does not authorize a State, LEA, or school to systematically exclude five percent of students from the assessment requirements of the ESEA. The regulations also allow a school to count students with the most significant cognitive disabilities who take an assessment based on alternate academic achievement standards as participants, and to count recently arrived English learners (defined in § 200.6(b)(4)(iv) of the current regulations as an English

learner “who has attended schools in the United States for less than twelve months”) who take the English language proficiency assessment or the reading/language arts assessment as participants on the State's reading/language arts assessment (even if they do not actually take the State's reading/language arts assessment). Section 200.20(d)(1) further allows States to average participation rate data from up to three school years in making a determination of whether the school, LEA, or State assessed 95 percent of all students and students in each subgroup.

*Proposed Regulations:* Proposed § 200.15 would replace current § 200.15 with regulations that update and clarify assessment participation rate requirements to reflect new statutory requirements, while retaining elements of current § 200.20 that are consistent with the ESEA, as amended by the ESSA. Proposed § 200.15(a) would incorporate the ESSA requirement that States annually measure the achievement of at least 95 percent of all students, and 95 percent of all students in each subgroup of students under proposed § 200.16(a)(2), who are enrolled in each public school. Participation rates would be calculated separately on the assessments in reading/language arts and mathematics required under section 1111(b)(2)(B)(v)(I). Proposed § 200.15(b)(1) would incorporate the statutory requirements related to the denominator that must be used for calculating the Academic Achievement indicator under proposed § 200.14 for purposes of annual meaningful differentiation of schools, while proposed § 200.15(b)(2) would establish minimum requirements for factoring the participation rate requirement for all students and each subgroup of students into the State accountability system. Specifically, the State would be required to take one of the following actions for a school that misses the 95 percent participation requirement for all students or one or more student subgroups: (1) Assign a lower summative rating to the school, described in proposed § 200.18; (2) assign the lowest performance level on the State's Academic Achievement indicator, described in proposed §§ 200.14 and 200.18; (3) identify the school for targeted support and improvement under proposed § 200.19(b)(1); or (4) another equally rigorous State-determined action, as described in its State plan, that will result in a similar outcome for the school in the system of annual meaningful differentiation under

proposed § 200.18 and will lead to improvements in the school's assessment participation rate so that it meets the 95 percent participation requirement. Proposed § 200.15(c)(1) would further require schools that miss the 95 percent participation rate for all students or for one or more subgroups of students to develop and implement improvement plans that address the reason or reasons for low participation in the school and include interventions to improve participation rates in subsequent years, except that schools identified for targeted support and improvement due to low participation rates would not be required to develop a separate plan than the one required under proposed § 200.22. The improvement plans would be developed in partnership with stakeholders, including parents, include one or more strategies to address the reason or reasons for low participation rates in the school and improve participation rates in subsequent years, and be approved and monitored by the LEA. In addition, proposed § 200.15(c)(2) would require each LEA with a significant number of schools missing the 95 percent participation rate for all students or for one or more subgroups of students to develop and implement an improvement plan that includes additional actions to support the effective implementation of school-level plans to improve low assessment participation rates, which would be reviewed and approved by the State.

Finally, proposed § 200.15(d) would require a State to include in its report card a clear explanation of how it will factor the 95 percent participation rate requirement into its accountability system. This section would also retain current regulatory requirements related to: (1) Not allowing the systematic exclusion of students from required assessments; (2) counting as participants students with the most significant cognitive disabilities who take alternate assessments based on alternate academic achievement standards; and (3) counting as participants recently arrived English learners who take either the State's English language proficiency assessment or the reading/language arts assessment.

*Reasons:* The ESEA, as amended by the ESSA, continues to require the participation of all students in the annual statewide assessments in reading/language arts and mathematics and includes this requirement as a significant component of State-developed accountability systems. In particular, ensuring that results on these statewide assessments are available for all students is essential for meeting

accountability system requirements related to the establishment and measurement of interim progress toward State-designed, long-term goals under section 1111(c)(4)(A); the development and annual measurement of the indicators under section 1111(c)(4)(B); the annual meaningful differentiation of school performance under section 1111(c)(4)(C); and the identification of schools for improvement under section 1111(c)(4)(D) and (d)(2)(A)(i). The proposed regulations reflect the critical importance of continuing to ensure that all students participate in annual statewide academic assessments so that parents and teachers have the information they need to help all students meet the challenging State academic standards and to maintain the utility of State accountability systems.

The proposed regulations would provide States with options to ensure that they meet the requirement in section 1111(c)(4)(E)(iii) by taking meaningful action to factor the 95 percent participation requirement into their accountability systems. Such action is essential to protect the credibility of a State's system of identifying schools in need of comprehensive or targeted support, enhance the validity of academic achievement information, and, most importantly, provide parents and educators with information to support all students in meeting the challenging State academic standards. These options suggest ways States may provide greater transparency and accurate, meaningful differentiation of schools to the public regarding low participation rates. In particular, the proposed options would ensure that failure to meet the 95 percent participation rate requirement is factored in the State's accountability system in a meaningful, publicly visible manner through a significant impact on a school's performance level or summative rating, identification for targeted support and improvement, or another equally rigorous, State-determined action, thus providing an incentive for the school to ensure that all students participate in annual State assessments. In addition to these options for factoring the participation rate requirement into the accountability system, the proposed regulations would ensure that all schools that miss the 95 percent participation rate develop plans to meaningfully address and improve assessment participation. The proposed regulations also would support State efforts to improve low participation rates by requiring LEAs with a significant number of schools that miss the 95 percent participation rate to

develop separate LEA improvement plans that include additional actions to ensure the effective implementation of school-level plans.

Given the critical importance of assessing all students and subgroups of students as part of providing a strong foundation for each component of a State's accountability system, and in ensuring that parents and educators have information to support all students in meeting the challenging State academic standards, we are especially interested in receiving public comment on additional or different ways than those articulated in the proposed regulations to support States in ensuring that low assessment participation rates are meaningfully addressed as part of the State's accountability system, either as part of annual meaningful differentiation of schools to increase transparency around assessment participation rates or as part of school-level actions to improve such rates.

#### *Section 200.16 Subgroups of students*

*Statute:* Section 1111(c)(2) of the ESEA, as amended by the ESSA, delineates the required subgroups of students that must be included in a statewide accountability system:

- Economically disadvantaged students;
- Students from major racial and ethnic groups;
- Children with disabilities; and
- English learners.

Under the ESEA, as amended by the ESSA, subgroups of students are included for multiple purposes in a statewide accountability system. States are required to:

- Establish long-term goals and measurements of interim progress for achievement and graduation rates for each subgroup of students, as well as for progress in attaining English language proficiency for English learners, that take into account the improvement necessary to make progress in closing proficiency and graduation rate gaps as described in section 1111(c)(4)(A);
- Produce disaggregated subgroup data for each required accountability indicator and annually differentiate among all public schools based on these indicators as described in section 1111(h)(1)(C); and
- Identify schools with one or more consistently underperforming subgroups of students and schools in which one or more subgroups of students perform as poorly as any title I school that is among the lowest-performing in the State for targeted support and improvement as described in section 1111(c)(4)(C)(iii) and 1111(d)(2)(A)(i).

The ESEA, as amended by the ESSA, also includes accountability requirements that apply only to English learners, including specific provisions for recently arrived English learners who have been enrolled in a school in the United States for less than 12 months, and students who were previously identified as English learners.

Section 1111(b)(3)(A) provides a State that chooses not to include results on academic assessments for recently arrived English learners in the statewide accountability system in their first year enrolled in schools in the United States with two options:

- Under section 1111(b)(3)(A)(i), a State may exclude a recently arrived English learner from one administration of the reading/language arts assessment required under section 1111(b)(2)(A) and exclude a recently arrived English learner's results on the reading/language arts (if applicable), mathematics, or English language proficiency assessment for accountability purposes in the first year of the student's enrollment in schools in the United States; or

- Under section 1111(b)(3)(A)(ii), a State may assess and report a recently arrived English learner's results on the reading/language arts and mathematics assessments required under section 1111(b)(2)(A), but exclude those results for accountability purposes in the student's first year of enrollment in schools in the United States. In the second year of a recently arrived English learner's enrollment in schools in the United States, the State must include a measure of such student's growth on the reading/language arts and mathematics assessments for accountability purposes. In the third and each succeeding year of a recently arrived English learner's enrollment, a State must include a measure of such student's proficiency on the reading/language arts and mathematics assessments for accountability purposes.

The ESEA, as amended by the ESSA, also specifies a limited exception to the requirement that a subgroup of students include only students who meet the definition for inclusion in that subgroup. Under section 1111(b)(3)(B), a State may include, for up to four years after exiting the English learner subgroup, the assessment results of such a student previously identified as an English learner in calculating the Academic Achievement indicator in reading/language arts and mathematics for the English learner subgroup in its statewide accountability system.

*Current Regulations:* Various sections of the current title I regulations describe how subgroups of students are factored

into the State accountability systems required by the ESEA, as amended by the NCLB.

Section 200.13 specifies that, as part of its definition of AYP, each State must apply the same AMOs to all required statutory subgroups of students (economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency), consistent with the regulations in § 200.7 for setting a minimum number of students, or n-size, for accountability and reporting that protects student privacy and produces valid and reliable accountability results. Section 200.19 requires disaggregated reporting on the other academic indicator in elementary and middle schools and on graduation rates, but does not require a State to use disaggregated subgroup data on the other academic indicator in elementary and middle schools for AYP determinations.

Current § 200.6 permits a State to exempt recently arrived English learners from one administration of the State's reading/language arts assessment. This section further defines a "recently arrived limited English proficient student" as a limited English proficient student who has attended schools in the United States (not including Puerto Rico) for less than 12 months. The regulations also require that a State and its LEAs report on State and district report cards the number of recently arrived English learners who are not assessed on the State's reading/language arts assessment, and clarify that a State must still include recently arrived English learners in its annual English language proficiency and mathematics assessments annually.

Section 200.20 permits a State to exclude the performance of a recently arrived English learner on a reading/language arts assessment (if administered to these students), mathematics assessment, or both, in determining AYP for a school or LEA. In other words, the performance of recently arrived English learners on content assessments may be excluded for accountability purposes for one administration of the content assessments.

Section 200.20 provides that in determining AYP for English learners and students with disabilities, a State may include in the English learner and students with disabilities subgroup, respectively, for up to two AYP determinations, scores of students who were previously English learners, but who have exited English learner status, and scores of students who were

previously identified as students with a disability under section 602(3) of the IDEA, but who no longer receive services. The regulations require that, if a State includes students who were previously identified as English learners or students who were previously identified as students with a disability under section 602(3) of the IDEA in the respective subgroups in determining AYP, the State must include the scores of all such students. A State may, however, exclude such students from determining whether a subgroup meets the State's n-size within a particular school. A State also cannot include such former students in those subgroups for reporting on other data beyond AYP determinations (e.g., for reporting participation rates).

*Proposed Regulations:* Proposed § 200.16 would replace the current regulations to clarify the statutory requirements under the ESEA, as amended by the ESSA, for how a State must include subgroups of students in its State accountability system. Specifically, the subgroups of students included in the proposed regulations are—

- Economically disadvantaged students;
- Students from each major racial and ethnic group;
- Children with disabilities, as defined in section 8101(4) of the ESEA, as amended by the ESSA; and
- English learners, as defined in section 8101(20) of the ESEA, as amended by the ESSA.

The proposed regulations would require each State to—

- Include each subgroup of students, separately, and the all students group, consistent with the State's minimum number of students, or n-size, when establishing long-term goals and measurements of interim progress under proposed § 200.13, measuring school performance on each of the indicators under proposed § 200.14, annually meaningfully differentiating schools under proposed § 200.18, and identifying schools for comprehensive and targeted support and improvement under proposed § 200.19.

- Include, at the State's discretion, for not more than four years after a student exits the English learner subgroup, the performance of a student previously identified as an English learner on the Academic Achievement indicator within the English learner subgroup for purposes of annual meaningful differentiation and identification of schools for support and improvement under proposed §§ 200.18 and 200.19, if the State includes all such students previously identified as English learners

and does so for the same State-determined number of years.

- Include, with respect to an English learner with a disability for whom there are no appropriate accommodations for one or more domains of the English language proficiency assessment required under section 1111(b)(2)(G) because the disability is directly related to that particular domain (e.g., a non-verbal English learner who cannot take the speaking portion of the assessment), as determined by the student's individualized education program (IEP) team or 504 team on an individualized basis, in measuring performance against the Progress in Achieving English Language Proficiency indicator, such a student's performance on the English language proficiency assessment based on the remaining domains in which it is possible to assess the student.

- Select a single statutory exemption from the two options included in section 1111(b)(3)(A) for the inclusion of recently arrived English learners in its accountability system and apply that exemption uniformly to all recently arrived English learners in the State; or

- Establish a uniform statewide procedure for determining how to apply the statutory exemption(s), if the State chooses to utilize either, or both, of the additional options included in section 1111(b)(3)(A) for the inclusion of recently arrived English learners in its accountability system. The proposed regulations would require a State, in establishing its uniform procedure, to take into account English language proficiency level and at its discretion, other student-level characteristics: Grade level, age, native language proficiency level, and limited or interrupted formal education. Each State's uniform procedure must be used to determine which, if any, exemption is appropriate for an individual English learner.

- Report annually on the number and percentage of recently arrived English learners included in accountability under the options described in section 1111(b)(3)(A).

*Reasons:* The ESEA, as amended by the ESSA, includes the same subgroups of students for purposes of a statewide accountability system as included under the ESEA, as amended by the NCLB. However, the ESSA changes the requirements for how the performance of students in each subgroup is included in the accountability system.

Proposed § 200.16 would clarify that a State must include each of the required subgroups of students separately when establishing long-term goals and measurements of interim progress, measuring school performance

on each of the indicators, annually meaningfully differentiating schools, and identifying schools for comprehensive and targeted support and improvement. This clarifies that, for example, “students from major racial and ethnic groups” cannot be combined into one large subgroup, or super-subgroup, that includes students from all major racial and ethnic groups together as a substitute for considering each of the major racial and ethnic groups separately. Relying exclusively on a combined subgroup or a super-subgroup of students, instead of using such groups in addition to individual subgroups of students (if a State chooses to do so), may mask subgroup performance and conflate the distinct academic needs of different groups of students, inhibit the identification of schools with one or more consistently underperforming subgroups of students for targeted support and improvement, and limit information available to the public and parents, which is contrary to the statutory purpose to increase transparency, improve academic achievement, and hold schools accountable for the success of each subgroup.

Permitting the inclusion of former English learners in the English learner subgroup for up to four years after they have exited the English learner subgroup recognizes that the population of English learners in a school changes over time, as new English learners enter and others are reclassified as English language proficient. Including students previously identified as English learners in the subgroup would allow schools to be recognized for the progress they have made in supporting such students toward meeting the challenging State academic standards over time. However, selecting which former English learners to include, for which purposes, and for how long could undermine the fairness of accountability determinations across the State by encouraging the inclusion of higher-achieving former English learners only, or encouraging the inclusion of higher-achieving former English learners for longer periods of time than their lower-achieving peers. Further, the inclusion of former English learners should be used to increase school-level accountability and recognition for supporting the English learner subgroup, which is possible only if such students are counted within the subgroup for purposes of meeting the State’s n-size.

For these reasons, proposed § 200.16 would clarify that if a State chooses to include former English learners in the English learner subgroup for up to four years, it must include all such former

English learners in the subgroup for the same period of time. Further, former English learners must be included in determining whether the English learner subgroup meets the State’s n-size in a particular school if a State chooses to include former English learners in the Academic Achievement indicator. The proposed regulations in § 200.16 would prohibit States from including former English learners in the English learner subgroup for purposes other than calculating and reporting on the Academic Achievement indicator. However, the proposed regulations would not prohibit States from establishing their own additional subgroups of students that include former English learners; we are aware that some States track the performance of “ever English learners”—students who have at any time been classified as English learners—and the proposed regulations would not prevent that practice.

The proposed regulations also would clarify that a State must include in the Progress in Achieving English Language Proficiency indicator the composite score of an English learner who has a disability that prevents that student from taking, even with appropriate accommodations, one or more domains of the English language proficiency assessment (speaking, listening, reading, or writing). The statute requires that each State assess all English learners annually in all four domains with the English language proficiency assessment, provide appropriate accommodations to an English learner who is also a child with a disability, and hold schools accountable for the performance of all English learners. We propose this regulation in recognition that, in a limited number of situations, the nature of a student’s disability may make it impossible to validly assess the student in a particular domain of the English language proficiency assessment, even with appropriate accommodations. For example, it may not be possible, even with appropriate accommodations, to administer the speaking domain of the English language proficiency assessment to a non-verbal English learner. The purpose of the proposed regulation is to ensure that such a student is still included within the accountability system based on his or her performance on the remaining domains of the English language proficiency assessment.

To ensure that this exception is used only where necessary, proposed 200.16(b)(2) would require a State to include the performance of such a student in the Progress in Achieving English Language Proficiency indicator

based on fewer than all four domains of language only where, as determined by the student’s IEP or 504 team on an individualized basis, it is not possible, even with appropriate accommodations, for the student to participate in one or more domains of the English language proficiency assessment. A State may not adopt categorical rules for excluding English learners with certain disabilities from corresponding domains of the English language proficiency assessment; rather, just as the IEP or 504 team makes the decision about accommodations on an individualized basis, so too the decision as to domain participation would be made by the IEP or 504 team on an individualized basis, and only for this limited subset of English learners.

The ESSA provides new flexibility in how States may include the performance of recently arrived English learners on academic assessments in the statewide accountability system by their second year of enrollment in schools in the United States. Proposed § 200.16 would clarify that recently arrived English learners must be included in meaningful and appropriate ways, acknowledging the diversity and varying needs of this population. Research has demonstrated that a student’s language proficiency, age, and educational background (such as amount of formal education and native language proficiency) have an impact on that student’s development of English language proficiency and academic achievement.<sup>5</sup> While some recently arrived English learners may be best served by taking the reading/language arts assessment in their first year of enrollment in U.S. schools, and subsequently included in growth calculations for accountability in their second year of enrollment, this exemption may be inappropriate for other recently arrived English learners. Thus, based on the existing research base, the proposed regulations would clarify that States could either choose to apply one of the statutory options for exempting recently arrived English learners uniformly to all recently arrived English learners, or have the option of taking into account English language proficiency level and, at a State’s discretion, certain additional student-level characteristics, including grade level, age, native language proficiency level, and limited or interrupted formal education, when determining which approach for

<sup>5</sup> Thomas, W. P., & Collier, V. (1997). “School effectiveness for language minority students.” Washington, DC: National Clearinghouse for Bilingual Education.

inclusion in the accountability system is most appropriate for each recently arrived English learner. The proposed regulations would also clarify that a State must establish a uniform procedure for making this student-level determination, which will ensure fairness across LEAs and maximize the inclusion of recently arrived English learners, while recognizing the heterogeneity of such students, and promote the availability of comparable data for recently arrived English learners statewide.

Although the statute specifically states that the scores of students previously identified as an English learner may be included for up to four years for the calculation of the Academic Achievement indicator, the statute is silent about whether States may include the scores of a student who was previously identified as a child with a disability under section 602(3) of the IDEA. Accordingly, proposed § 200.16 would differ from the current title I regulations, which allow States to count the scores of students who were previously identified as a child with a disability for the purposes of making accountability determinations for up to two years. Unlike English learners, who all share a goal of attaining English language proficiency and exiting the English learner subgroup, the goal for all children with disabilities is not always or necessarily to exit special education services. The flexibility in the current title I regulations is intended to allow school assessment results for the student with disabilities subgroup to reflect the gains that students exiting the subgroup had made in academic achievement. As a result, however, the academic achievement results used for accountability for the students with disabilities subgroup in a particular school may not fully reflect the achievement of students receiving special education services. Because this provision was not included in the ESEA, as amended by ESSA, we seek specific comments on whether the provision to allow a student who was previously identified as a child with a disability under section 602(3) of the IDEA, but who no longer receives special education services, to be included in the children with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator should be retained or modified in proposed § 200.16, and if so, whether such students should be permitted in the subgroup for up to two years consistent with the current title I regulations, or for a shorter proposed period of time.

#### *Section 200.17 Disaggregation of Data*

*Statute:* Section 1111(c)(3) of the ESEA, as amended by the ESSA, requires each State to determine, in consultation with stakeholders, a minimum number of students (hereafter “n-size”) that the State will use for accountability and reporting purposes. The n-size must be statistically sound, the same for all students and for each subgroup of students, and sufficient to not reveal any personally identifiable information.

*Current Regulations:* Section 200.7(a)(1) prohibits a State from using disaggregated data for reporting purposes or AYP determinations if the number of students in the subgroup is insufficient to yield statistically reliable information. Section 200.7(a)(2) requires a State, using sound statistical methods, to determine and justify in its consolidated State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

Section 200.7(a)(2)(i) requires a State, in determining its minimum subgroup size, to consider statistical reliability in setting such number to ensure, to the maximum extent practicable, that all students are included, particularly at the school level, for purposes of making accountability decisions. Section 200.7(a)(2)(ii) requires each State to revise its Consolidated State Application Accountability Workbook to include: (1) An explanation of how the State’s minimum subgroup size meets the requirements of § 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 subgroups of students; and (3) information on the number and percentage of students and subgroups of students excluded from school-level accountability determinations. Section 200.7(a)(2)(iii) requires each State to submit a revised Consolidated State Application Accountability Workbook that incorporates the information required in § 200.7(a)(2)(ii) for technical assistance and peer review.

The section also clarifies that students excluded from disaggregation and accountability at the school level must be included at the level (LEA or State) for which the number of students is reliable. It stipulates that a State must apply section 444 of the General Education Provisions Act (the Family Educational Rights and Privacy Act of

1974) in determining whether disaggregated data would reveal personally identifiable information.

*Proposed Regulations:* Proposed § 200.17 would retain and reorganize the relevant requirements of current § 200.7, which would be removed and reserved, so that these requirements are incorporated directly into the sections of the proposed regulations pertaining to accountability, instead of regulations pertaining to assessments in current §§ 200.2 through 200.10. Further, proposed § 200.17 would update the requirements in current § 200.7 to reflect new statutory requirements that promote statistical reliability and inclusion of subgroups for accountability in the ESSA.

Proposed § 200.17 would also clarify data disaggregation requirements. Specifically, proposed § 200.17(a)(2)(iii) would clarify that, for the purposes of the statewide accountability system under section 1111(c), a State’s n-size may not exceed 30 students, unless the State is approved to use a higher number after providing a justification, including data on the number and percentage of schools that are not held accountable for the results of each required subgroup of students in the State’s system of annual meaningful differentiation, in its State plan. Proposed § 200.17(a)(2)(iv) would further clarify that the n-size sufficient to yield statistically reliable information for purposes of reporting under section 1111(h) may be lower than the n-size used for purposes of the statewide accountability system under section 1111(c).

*Reasons:* The ESEA, as amended by the ESSA, continues to focus on holding schools accountable for the outcomes of specific subgroups of students. The statute specifically requires that accountability determinations be based on the performance of all students and each subgroup of students, and requires a State to disaggregate data for purposes of measuring progress toward its long-term goals performance on each indicator under proposed §§ 200.13 and 200.14. The need to ensure statistical reliability and protect student privacy qualifies these disaggregation requirements; thus, the statute requires States to set an n-size and prohibits accountability determinations or reporting by subgroup if the size of the subgroup is too small to yield statistically reliable results, or would reveal personally identifiable information about individual students. Because these are statutory requirements for State accountability systems under section 1111(c), we propose to reorganize the current

regulations so that requirements related to a State's n-size are included within the regulatory sections pertaining to accountability, instead of State assessment systems, by removing and reserving current § 200.7 and replacing it with proposed § 200.17.

A State's n-size 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. The n-size must also be small enough to ensure the maximum inclusion of each student subgroup in accountability decisions and school identification, including measuring student progress against the State's long-term goals and indicators and notifying schools with consistently underperforming subgroups of students for targeted support and improvement, consistent with the statutory requirements to disaggregate data for such purposes.

Setting an n-size that is statistically reliable has been a challenge for States. Previous approaches have, at times, prioritized setting a conservative n-size (e.g., 100 students) in order to yield more reliable accountability decisions. However, the use of an n-size is intended to ensure that results are both reliable and valid. While, in general, the reliability of results increases as the sample size increases, the validity of the results can decrease as more student subgroups are excluded from the accountability system. In other words, in determining an n-size, a State must appropriately balance the goal of producing reliable results with the goal of holding schools accountable for the outcomes of each subgroup of students. For example, under the ESEA, as amended by the NCLB, 79 percent of students with disabilities were included in the accountability systems of States with an n-size of 30. However, only 32 percent of students with disabilities were included in the accountability systems of States with an n-size of 40.<sup>6</sup> Similarly, in a 2016 examination of the effect of using different subgroup sizes in California's CORE school districts,<sup>7</sup> the study found that when using an n-size of 100, only 37 percent of African American students' math scores are

reported at the school-level. However, using an n-size of 20 increases the percentage of "visible" African American students to 88 percent. The impact for students with disabilities is even larger: when the n-size is 100, only 25 percent of students with disabilities are reported at the school-level; however, 92 percent of students with disabilities are reported when using an n-size of 20.

Other analyses have shown that an n-size of 60 can potentially exclude all students with disabilities from a State's accountability system.<sup>8</sup> Basic statistics (i.e., the Central Limit Theorem) support the use of 30 as an n-size.<sup>9</sup> The Central Limit Theorem states that as long as one uses a reasonably large sample size (e.g., sample size greater than or equal to 30), the mean will be normally distributed, even if the distribution of scores in the sample is not.<sup>10</sup> Finally, some researchers have suggested that an n-size of 25 is sufficient to yield reliable data on student performance.<sup>11</sup>

For these reasons, proposed § 200.17(a)(2) would allow states to establish a range of n-sizes, not to exceed 30, so that States may select an n-size that is both valid and reliable. The proposed regulations would also allow a State to set an n-size that exceeds 30 students if it demonstrates how the higher number promotes sound, reliable accountability decisions and the use of disaggregated data in making those decisions in its State plan, including data on the number and percentage of schools that would not be held accountable for the results of students in each subgroup under its proposed n-size.

#### *Section 200.18 Annual Meaningful Differentiation of School Performance*

**Statute:** Section 1111(c)(4)(C)(i) of the ESEA, as amended by the ESSA, requires that each State establish a system for meaningfully differentiating all public schools in the State each year. The system of annual meaningful differentiation must be based on all of the indicators in the State accountability system under section 1111(c)(4)(B) for

all students and for each subgroup of students. Section 1111(c)(4)(C)(ii) requires that the system of annual meaningful differentiation afford substantial weight to each of the following indicators:

- Academic achievement;
- Graduation rates for high schools;
- A measure of student growth, if determined appropriate by the State, or another valid and reliable academic indicator that allows for meaningful differentiation in school performance for elementary and secondary schools that are not high schools; and
- Progress in achieving English language proficiency.

These indicators, combined, must also be afforded much greater weight than the indicator or indicators of school quality or student success.

**Current Regulations:** Various sections of the current title I regulations describe how a school's performance against its AMOs in reading/language arts and mathematics and other academic indicators, including graduation rates, determine whether a school makes, or fails to make, AYP in a given school year. These sections essentially restate the statutory language in the ESEA, as amended by the NCLB.

**Proposed Regulations:** Proposed § 200.18 would replace the current regulations with regulations implementing the ESEA statutory requirements, as amended by the ESSA, for States to establish systems of annual meaningful differentiation of all public schools.

#### *Performance Levels and Summative Ratings*

The proposed regulations would require each State's system of annual meaningful differentiation to—

- Include the performance of all students and each subgroup of students in a school on all of the indicators, consistent with proposed regulations for inclusion of subgroups in § 200.16, for disaggregation of data in § 200.17, and for inclusion of students that attend the same school for only part of the year in § 200.20(c);
- Include at least three distinct levels of performance for schools on each indicator that are clear and understandable to the public, and set those performance levels in a way that is consistent with the school's attainment of the State's long-term goals and measurements of interim progress in proposed § 200.13;
- Provide information on each school's level of performance on each indicator in the accountability system separately as part of the description of the State's accountability system under

<sup>6</sup> Harr-Robins, J., Song, M., Hurlburt, S., Pruce, C., Danielson, L., & Garet, M. (2013). "The inclusion of students with disabilities in school accountability systems: An update (NCEE 2013–4017)." Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, pp. 24–26.

<sup>7</sup> Hough, H., & Witte, J. (2016). "Making students visible: Comparing different student subgroup sizes for accountability." CORE–PACE Research Partnership, Policy Memo, 16–2.

<sup>8</sup> Simpson, M.A., Gong, B., & Marion, S. (2006). "Effect of minimum cell sizes and confidence interval sizes for special education subgroups on school-level AYP determinations." Council of Chief State School Officers; Synthesis Report 61. National Center on Educational Outcomes, University of Minnesota.

<sup>9</sup> Urdan, T.C. (2010). *Statistics in Plain English*. New York: Routledge.

<sup>10</sup> Ibid.

<sup>11</sup> Linn, R.L., Baker, E. L., & Herman, J.L. (2002). "Minimum group size for measuring adequate yearly progress." The CRESST line. [http://www.cse.ucla.edu/products/newsletters/cresst-cl2002\\_4.pdf](http://www.cse.ucla.edu/products/newsletters/cresst-cl2002_4.pdf).

section 1111(h)(1)(C)(i)(IV) that is included as part of LEA report cards consistent with proposed § 200.32;

- Result in a single rating from among at least three distinct rating categories for each school, based on a school's level of performance on each indicator, to describe a school's summative performance and include such a rating as part of the description of the State's system for annual meaningful differentiation on LEA report cards consistent with proposed §§ 200.31 and 200.32;

- Meet the requirements of proposed § 200.15 to annually measure the achievement of not less than 95 percent of all students and 95 percent of all students in each subgroup of students on the assessments under section 1111(b)(2)(B)(v)(I); and

- Inform the State's methodology to identify schools for comprehensive and targeted support and improvement described in proposed § 200.19.

#### Weighting of Indicators

To annually meaningfully differentiate among all public schools in the State, including determining the summative rating for each school, proposed § 200.18 would require States to use consistent weighting among the indicators for all schools within each grade span. In particular, proposed § 200.18 would require States to give substantial weight to each of the Academic Achievement, Academic Progress, Graduation Rate, and Progress in English Language Proficiency indicators, consistent with the statutory requirements in section 1111(c)(4)(C)(ii)(I). Proposed § 200.18 would also require States to give much greater weight to those indicators, in the aggregate, than to the indicator or indicators of school quality or student success, consistent with the statutory requirements in section 1111(c)(4)(C)(ii)(II).

Further, to show that its system of annual meaningful differentiation meets these requirements for providing substantial and much greater weight to certain indicators, under proposed § 200.18 each State would be required to:

- Demonstrate that school performance on the School Quality or Student Success indicator(s) may not be used to change the identity of schools that would otherwise be identified for comprehensive support and improvement, unless such schools are making significant progress for the all students group under proposed § 200.16(a)(1) on at least one of the indicators that is afforded substantial

weight and can be measured for all students; and

- Demonstrate that school performance on the School Quality or Student Success indicator(s) may not be used to change the identity of schools that would otherwise be identified for targeted support and improvement, unless each consistently underperforming or low-performing subgroup is making significant progress on at least one of the indicators that is afforded substantial weight.

In other words, the four substantially weighted indicators, together, would not be deemed to have much greater weight in the system if performance on the other, not substantially weighted indicator could remove a school from identification. Thus, in order for the school to be removed from identification it must also be making progress for the relevant subgroup of students on an indicator that receives substantial weight.

Similarly, under proposed § 200.18 each State would be required to demonstrate, based on the performance of all students and each subgroup of students, that a school performing in the lowest performance level on any of the substantially weighted indicators does not receive the same summative rating as a school performing in the highest performance level on all of the indicators. In other words, an indicator would not be considered to have substantial weight, and the overall system would not be meaningfully differentiating among schools, if low performance on that indicator failed to result in a school being rated differently than a school performing at the highest level on every indicator.

Finally, proposed § 200.18 would clarify that a State would not be required to afford the same substantial weight to each of the indicators that are required to receive a substantial weight in the system of annual meaningful differentiation. Further, it would clarify that if a school did not meet the State's n-size for English learners, a State must exclude the Progress in English Language Proficiency indicator from annual meaningful differentiation for the school and afford all of the remaining indicators for such a school the same relative weight that is afforded to those indicators in schools that meet the State's n-size for the English learner subgroup. It would not necessarily, however, relieve a school from its reporting requirements for English learners under the law if a State selects an n-size that is lower for reporting purposes than for purposes of annual meaningful differentiation consistent with proposed § 200.17.

*Reasons:* Given the changes in the ESEA statutory requirements and the heightened role for States in establishing systems of annual meaningful differentiation, we propose to revise the current regulations to reflect the new requirements and clarify how annual meaningful differentiation is related to other parts of the accountability system, such as participation in assessments in proposed § 200.15 and the identification of schools for comprehensive and targeted support and improvement in proposed § 200.19.

Without successful annual meaningful differentiation of schools, low-performing schools may not be identified for needed resources and interventions, and States and LEAs may be unable to provide appropriate supports and recognition that are tailored to schools' and students' needs based on their performance. Additionally, parents and the public will lack access to transparent information about the quality of schools in their communities and how well schools are educating all students. Providing information for each of these purposes is particularly difficult, given that accountability systems must include multiple indicators, disaggregated by multiple subgroups. For these reasons, proposed § 200.18 would further clarify the statutory requirements to ensure that annual meaningful differentiation results in actionable, useful information for States, LEAs, educators, parents, and the public.

#### Performance Levels and Summative Ratings

First, proposed § 200.18(b) would require States to establish at least three distinct performance levels for schools on each indicator and ensure that LEAs include how each school fared against these performance levels, separately by indicator, as part of the description of the accountability system on annual LEA report cards. To ensure that differentiation of schools is meaningful, the accountability system should allow for more than two possible outcomes for each school, and a requirement for at least three performance levels on each indicator would enable the system to recognize both high-performing and low-performing schools that are outliers, and distinguish them from more typical school performance.

Second, proposed § 200.18(b) would require each State to set performance levels on each indicator in a way that is consistent with attainment of the State's long-term goals and measurements of interim progress. If a school is



repeatedly failing to make sufficient progress toward the State's goals for academic achievement, graduation rates, or English language proficiency, that would be reflected in the performance level the school receives on those indicators. This would help ensure that the system of annual meaningful differentiation and the State's long-term goals work together to provide a coherent picture of school performance to parents and the public, and that schools receive a consistent signal regarding the student progress and outcomes they are expected to achieve each year.

In addition, proposed § 200.18(b) would require the performance levels to be clear and understandable to parents and the public. For example, creating three levels of performance that are all synonyms for "meeting expectations" would likely be unhelpful, confusing, and fail to differentiate between schools in a meaningful way. Instead, the levels should indicate distinct differences in performance in user-friendly terms that the local community, especially students' parents, can understand.

These performance levels would need to be reported separately for each indicator under proposed § 200.14, because each measures a distinct aspect of school quality and performance, as well as reported together in a single summative rating, from among at least three overall school rating categories. Many schools may excel on some indicators, and struggle on other indicators—information that could be hidden if only an aggregate rating were reported, or if performance levels were reported on some, but not all, of the indicators. This also serves as an important safeguard to ensure that the Academic Achievement, Academic Progress, Graduation Rates, and Progress in Achieving English Language Proficiency indicators—the substantially weighted indicators in the system—are not overshadowed in a summative rating by School Quality or Student Success indicators that States may add. Further, by presenting the performance level on each indicator separately, States and districts would be better equipped to customize supports, technical assistance, and resources to meet the needs of each school.

However, there is significant value in providing a summative rating for each school that considers the school's level of performance across all of the indicators, and many States have already chosen to aggregate multiple measures into a single rating (*e.g.*, A–F school grades, performance indices, accreditation systems) for State or Federal accountability purposes. A

single summative rating is easy for stakeholders, parents, and the public to understand, summarizes complicated information into a more digestible format, and provides clear comparisons among schools, just as grade point averages provide a quick, high-level snapshot of students' average academic performance, while students' grades in each subject provide more detailed information about particular strengths and weaknesses. Further, a summative rating sends a strong signal to educators and school leaders to focus on improving school performance across all indicators in the system, as each will contribute to the summative result. Research has shown that accountability systems have a stronger impact on increasing student achievement, particularly in mathematics, when summative ratings are linked to accountability determinations and potential rewards and interventions for schools than when systems rely on reporting information without school-level consequences based on that information.<sup>12</sup> For these reasons, proposed § 200.18 would require States to provide schools with summative ratings, across all indicators, and to report those ratings for each school on LEA report cards, as described in proposed §§ 200.31 and 200.32.

#### Weighting of Indicators

Proposed § 200.18(c) and (d) would clarify the requirements for four indicators—Academic Achievement, Academic Progress, Graduation Rates, and Progress in Achieving English Language Proficiency, as described in proposed § 200.14—to be afforded substantial weight separately, and much greater weight together, than the State's indicator or indicators of School Quality or Student Success in the summative rating by specifying three checks that States must meet to demonstrate that their systems comply with this requirement. Taken together, these checks would help ensure that the indicators that are required in the statute to receive much greater weight, in the aggregate, ultimately drive annual determinations of school quality and identification of schools for support and

improvement. Similarly, they would help ensure that each substantially weighted indicator is not overshadowed by indicators that are not afforded that distinction by the statute. In addition to clarifying the statute, the checks required in proposed § 200.18(d) would provide critical parameters to help ensure that State accountability systems will emphasize student academic outcomes, like academic achievement, graduation rates, and English language proficiency, and will help close achievement gaps, consistent with the purpose of title I of the ESEA.

Proposed § 200.18(c) and (e) would clarify that in meeting the requirement to use consistent weighting across all schools within a grade span and for particular indicators to be afforded substantial weight, each indicator does not have to receive the same substantial weight. This would allow States to prioritize among the substantially weighted indicators, based on their unique goals and challenges, and customize their systems of annual meaningful differentiation to emphasize certain indicators more heavily within a particular grade span.

Further, proposed § 200.18(e) would clarify how a State must meet the requirements that they afford indicators substantial weight when a school does not enroll sufficient numbers of English learners to include the Progress in Achieving English Language Proficiency indicator. By requiring the same relative weighting among the remaining indicators in such a school as the weighting used in schools that meet the State's n-size for the English learner subgroup, the proposed regulation would help promote fair, comparable differentiation among all public schools, regardless of variation in the demographics of a school's student population. If the Academic Achievement indicator typically receives twice the weight of School Quality or Student Success indicators, as determined by the State, in schools that meet the State's n-size for English learners, the Academic Achievement indicator would continue to receive twice the weight of the School Quality or Student Success indicators in schools that do not meet the State's n-size for English learners. In this way, the proposed regulations would ensure that the weight that would have otherwise been given to the Progress in Achieving English Language Proficiency indicator is distributed among the other indicators in an unbiased and consistent way, so that the overall accountability system does not place relatively more, or less, emphasis on a particular

<sup>12</sup> See, for example, Dee, Thomas S., & Jacob, B. (May 2011). "The impact of No Child Left Behind on student achievement." *Journal of Policy Analysis and Management*, 30(3), 418–446; Carnoy, Martin, & Loeb, S. (2002). "Does external accountability affect student outcomes? A cross-state analysis." *Educational Evaluation and Policy Analysis*, 24(4), 305–31; and Ahn, T., & Vigdor, J. L. (September 2014). "The impact of No Child Left Behind's accountability sanctions on school performance: Regression discontinuity evidence from North Carolina." NBER Working Paper No. w20511.

indicator in schools without sufficient numbers of English learners.

Overall, proposed § 200.18 would provide clarity to States, support consistency in how terms are defined, and help ensure that key indicators, especially those most directly related to student learning outcomes, receive the emphasis required by the statute in the accountability system. The terms “substantial” and “much greater” are ambiguous, especially when States could employ various approaches in order to differentiate schools. The proposed regulations would give consistent meaning to these terms and help protect subgroups of students whose performance could be overlooked, and whose schools could go unidentified, if certain indicators were afforded insufficient weight. For example, if Progress in Achieving English Language Proficiency received less than “substantial” weight in a State’s system of annual meaningful differentiation, it is possible that schools failing to support their English learners in attaining English language proficiency would go unidentified for targeted support and improvement, and students in those schools would not receive the supports, resources, and services they would have otherwise been eligible for as a school identified for improvement.

#### *Section 200.19 Identification of Schools*

*Statute:* Section 1111(c)(4)(D) of the ESEA, as amended by the ESSA, requires each State to create a methodology, based on the system of annual meaningful differentiation described in section 1111(c)(4)(C), for identifying certain public schools for comprehensive support and improvement. This methodology must identify schools beginning with the 2017–2018 school year, and at least once every three years thereafter, and must include three types of schools, specified in section 1111(c)(4)(D)(i)—

- The lowest-performing five percent of all title I schools in the State;
- Any public high school in the State failing to graduate one-third or more of its students; and
- Title I schools with a consistently underperforming subgroup that, on its own, is performing as poorly as all students in the lowest-performing five percent of title I schools and that has failed to improve after implementation of a targeted support and improvement plan.

Section 1111(c)(4)(C)(iii) and section 1111(d)(2)(A)(i) also require a State to use its method for annual meaningful differentiation, based on all indicators

in the accountability system, to identify any public school in which one or more subgroups of students is consistently underperforming, as determined by the State, and to notify each LEA in the State of any public school served by the LEA of such identification so that the LEA can ensure the school develops a targeted support and improvement plan. The notification must also specify, beginning with the 2017–2018 school year as described in section 1111(d)(2)(D), if a subgroup of students in the school, on its own, has performed as poorly as all students in the bottom five percent of title I schools that have been identified for comprehensive support and improvement. This type of targeted support and improvement schools must implement additional targeted supports, as described in section 1111(d)(2)(C).

Section 1111(c)(4)(D)(ii) specifies that a State may also add other statewide categories of schools in addition to the categories of schools described above.

*Current Regulations:* Section 200.32 of the current title I regulations requires all LEAs to identify any title I school for improvement that fails to make AYP for two or more consecutive years.

Generally, under the regulations, title I schools must be identified by the beginning of the school year following the school year in which the LEA administered the assessments that resulted in the school’s failure to make AYP.

*Proposed Regulations:* Proposed § 200.19 would replace the current regulations with regulations reflecting the new statutory requirements under the ESEA, as amended by the ESSA, to identify schools for comprehensive support and improvement and for targeted support and improvement.

#### *Comprehensive Support and Improvement, Generally*

With regard to identification for comprehensive support and improvement, the proposed regulations would require each State to establish a methodology, based on its system of annual meaningful differentiation under proposed § 200.18, to identify a statewide category of schools for comprehensive support and improvement, which must include three types of schools: The lowest-performing schools, high schools with low graduation rates, and schools with chronically low-performing subgroups.

#### *Lowest-Performing Five Percent of Title I Schools*

The proposed regulations would require that each State identify the lowest-performing schools to include at

least five percent of title I elementary, middle, and high schools in the State, taking into account—

- A school’s summative rating among all students on the State’s accountability indicators, averaged over no more than three years consistent with proposed § 200.20(a), which describes data procedures for annual meaningful differentiation and identification of schools; and
- The statutory requirement to assign substantial weight individually, and much greater weight overall, to the indicators of Academic Achievement, Academic Progress, Graduation Rates, and Progress in Achieving English Language Proficiency.

#### *Low Graduation Rate High Schools*

Proposed § 200.19 would require low graduation rate high schools to include any high school in the State with a four-year adjusted cohort graduation rate among all students below 67 percent, or below a higher percentage selected by the State, averaged over no more than three years consistent with proposed § 200.20(a).

#### *Schools With Chronically Low-Performing Subgroups*

Proposed § 200.19 would also require States to identify schools with chronically low-performing subgroups of students, which are defined as any title I school with one or more subgroups that performs as poorly as all students in any of the lowest-performing five percent of title I schools under proposed § 200.19(a)(1) and that have not sufficiently improved, as defined by the State, after implementation of a targeted support and improvement plan over no more than three years.

#### *Identification for Targeted Support and Improvement*

With regard to identification of schools for targeted support and improvement, the proposed regulations would establish requirements for identifying two types of schools. First, a State would be required to identify under proposed § 200.19(b)(2) each school with at least one low-performing subgroup of students, which is defined as a subgroup of students that is performing at a level at or below the summative performance of all students in any of the lowest-performing five percent of title I schools in comprehensive support and improvement. Second, each State would establish a methodology, based on its system of annual meaningful differentiation under proposed § 200.18, to identify schools with consistently underperforming subgroups for targeted

support and improvement under proposed § 200.19(b)(1). Proposed § 200.19(c) would require that the State's methodology—

- Include any school with at least one consistently underperforming subgroup of students; and

- Take into account (1) a school's performance on the accountability indicators, over no more than two years, and (2) the statutory requirement to assign substantial weight individually, and much greater weight overall, to the indicators of Academic Achievement, Academic Progress, Graduation Rates, and Progress in Achieving English Language Proficiency. This methodology could also, at the State's discretion, include schools with low participation rates consistent with proposed § 200.15(b)(2)(iii).

In addition, proposed § 200.19(c) would require each State to identify subgroups of students that are consistently underperforming using a uniform definition across all LEAs, which may include:

- A subgroup of students that is not on track to meet the State's long-term goals or is not meeting the State's measurements of interim progress under proposed § 200.13;

- A subgroup of students that is performing at the lowest performance level in the system of annual meaningful differentiation on at least one indicator, or is particularly low performing on measures within an indicator (e.g., performance on the State mathematics assessments);

- A subgroup of students that is performing at or below a State-determined threshold compared to the average performance among all students, or the highest-performing subgroup, in the State;

- A subgroup of students that is performing significantly below the average performance among all students, or the highest-performing subgroup, in the State, such that the performance gap is among the largest in the State; or

- Another definition, determined by the State, which the State demonstrates in its State plan would meet all proposed requirements for identification of schools for targeted support and improvement.

#### Frequency and Timeline for Identification

Proposed § 200.19 would also establish the timeline for identification of schools for comprehensive and targeted support and improvement, as follows:

- The lowest-performing title I schools, low graduation rate high

schools, and title I schools with chronically low-performing subgroups would be identified for comprehensive support and improvement at least once every three years, beginning with the 2017–2018 school year, except that schools with chronically low-performing subgroups of students would not be required to be identified the first time a State identifies its lowest-performing and low graduation rate high schools in the 2017–2018 school year.

- Schools with consistently underperforming subgroups of students would be identified for targeted support and improvement annually, beginning with the 2018–2019 school year.

- Schools with low-performing subgroups of students that are performing at a level at or below the summative performance of all students in any of the lowest-performing five percent of title I schools would be identified at least once every three years, with identification occurring in each year that the State identifies the lowest-performing five percent of title I schools for comprehensive support and improvement, beginning with the 2017–2018 school year.

Finally, proposed § 200.19 would require that each State identify schools for comprehensive and targeted support and improvement by the beginning of the school year for which such school is identified. Specifically, the year of identification would be defined as the school year immediately following the year in which the State most recently measured the school's performance on the indicators under proposed § 200.14 that resulted in the school's identification. In other words, schools identified for the 2017–2018 school year would be identified, at a minimum, on the basis of their performance in the 2016–2017 school year and schools identified for the 2018–2019 school year would be identified, at a minimum, on the basis of their performance in the 2017–2018 school year, consistent with proposed § 200.20(a) regarding uniform procedures for averaging data.<sup>13</sup>

<sup>13</sup> Recognizing that identification of schools in 2017–2018 may be delayed in some States due to the Department's review and approval process for State plans under section 1111 of the ESEA, as amended by the ESSA, the Department plans to issue non-regulatory guidance to allow delayed identification of schools in the 2017–2018 school year in States whose plans have not yet been approved by the beginning of the 2017–2018 school year consistent with the State plan submission timeline in proposed § 299.13. Because proposed §§ 200.21 and 200.22 would allow identified schools to have a planning year, States and LEAs could allow schools that were identified for comprehensive or targeted support and improvement partway through the 2017–2018 school year to engage in planning and pre-implementation activities for the remainder of the

*Reasons:* Proposed § 200.19 replaces obsolete provisions of current regulations with new regulations incorporating the requirements under the ESEA, as amended by the ESSA, for the identification of low-performing schools.

Appropriate, accurate, and timely identification of low-performing schools is critical to ensuring that State accountability systems work and help improve student academic achievement and school success, as intended in the statute. LEAs are eligible to receive additional funding from their States, as described in proposed § 200.24, to support these schools. If low-performing schools are misidentified and excluded from comprehensive or targeted support and improvement, students who are struggling may not receive the additional resources and support they need. In addition, research has demonstrated that accountability systems with meaningful consequences for poor school performance are more effective at improving student outcomes than systems that rely primarily on reporting of school-level data to encourage improvement.<sup>14</sup> For these reasons, and given the extent of the statutory changes, we propose to update the current regulations to reflect the new requirements and support State implementation.

The proposed regulations would also clarify statutory school improvement provisions through additional requirements that align identification for school improvement with other accountability requirements, help ensure appropriate and timely identification of schools with low-performing students and subgroups of students, and create a cohesive system of school accountability and improvement, with distinct reasons for school identification and clear timelines for identification.

#### Comprehensive Support and Improvement, Generally

Proposed § 200.19 would clarify that identification of title I schools in the lowest-performing five percent of title I schools in the State and identification of high schools with low graduation rates

2017–2018 school year, so that all schools are fully implementing their support and improvement plans, as required by the ESEA, as amended by the ESSA, on the first day of the 2018–2019 school year.

<sup>14</sup> See, for example, Dee, Thomas S., & Jacob, B. (May 2011). "The impact of No Child Left Behind on student achievement." *Journal of Policy Analysis and Management*, 30(3), 418–446; and Hanushek, Eric A., & Raymond, M.E. (2005). "Does school accountability lead to improved student performance?" *Journal of Policy Analysis and Management*, 24(2), 297–327.

is based on the performance of all students in the school. This clarification would help distinguish these schools, which proposed § 200.19 refers to as the lowest-performing schools and low graduation rate high schools, from schools identified due to consistently underperforming subgroups of students or low-performing subgroups. Further, because schools identified due to chronically low-performing subgroups of students are identified by directly comparing subgroup performance in a particular school to the performance of students within schools in the lowest-performing five percent of schools, the lowest-performing schools must be identified on the basis of all students' performance for this comparison to be meaningful.

Similarly, proposed § 200.19 would clarify that identification of each type of school in comprehensive support and improvement must be based on a school's performance over no more than three years, consistent with the statutory requirement to identify these schools once every three years and with proposed regulations regarding averaging data across years under proposed § 200.20(a). If data were considered over a longer period of time, it may not reflect the school's current learning conditions, potentially leading to inappropriate identification of schools that have improved dramatically, or non-identification of schools that have experienced significant declines, since the last time the State identified these schools. Limiting the window over which performance may be considered at three years would help ensure identification is timely and accurate, and that improvement plans are developed for schools most in need of support.

#### Lowest-Performing Five Percent of Title I Schools

The proposed regulations would help ensure annual meaningful differentiation and school identification work together, creating a coherent accountability system that parents, the public, and other stakeholders can understand and that provides consistent information to schools regarding the progress and outcomes they are expected to achieve. For these reasons, proposed § 200.19 would ensure the lowest-performing schools are identified school summative ratings. For similar reasons, proposed § 200.19 would clarify that identification of the lowest-performing schools would be consistent with the statutory requirement that the Academic Achievement, Academic Progress, Graduation Rate, and Progress in Achieving English Language

Proficiency indicators be given substantial weight individually, and much greater weight together, than indicator(s) of School Quality or Student Success.

#### Low Graduation Rate High Schools

Proposed § 200.19 would specify that any high school with a four-year adjusted cohort graduation rate below 67 percent, averaged over no more than three years, must be identified due to low graduation rates, consistent with the statutory requirements in section 1111(c)(4)(d)(i)(II). However, the proposed regulations also would permit a State to set a threshold that is higher than 67 percent for identifying low graduation rate high schools, in recognition of the wide range of average graduation rates across different States.<sup>15</sup>

Although the statute permits the use of an extended-year adjusted cohort graduation rate within the Graduation Rate indicator, the four-year adjusted cohort graduation rate is the only measure within the Graduation Rate indicator required for all schools. Relying exclusively on the four-year adjusted cohort graduation rate for identification would provide a consistent benchmark for holding schools accountable across States and LEAs, and signal the importance of on-time high school graduation as a key determinant of school and student success. If extended-year rates were considered in the identification of such high schools, the performance of students failing to graduate on-time could compensate for low on-time graduation rates, as calculated by the four-year adjusted cohort graduation rate, and prevent identification of high schools with low on-time graduation rates.

#### Identification for Targeted Support and Improvement

Proposed § 200.19 would also support States in accurately identifying schools for targeted support and improvement by aligning the methodology for identifying these schools with other components of the State accountability system. Specifically, proposed § 200.19(b) would clarify the two types of schools identified for targeted support and improvement: Schools with low-performing subgroups of students and schools with consistently underperforming subgroups of students. First, a State would be required under proposed § 200.19(b)(2) to identify

schools with one or more subgroups of students performing, as an individual subgroup, as poorly as all students in any school in the lowest-performing five percent of title I schools based on the State's summative ratings. These schools would be referred to as schools with low-performing subgroups in proposed § 200.19 and would receive additional targeted support under proposed § 200.22. The proposed regulations are needed to clarify how identification of these schools enables the State to meet the statutory requirement to identify, at least once every three years, any school with low-performing subgroups of students for comprehensive support and improvement if such a school receives title I funds and does not meet the State's exit criteria after implementing a targeted support and improvement plan (described further in proposed § 200.22).

Second, proposed § 200.19(c) would require States, in identifying schools with consistently underperforming subgroups of students for targeted support and improvement, to consider a school's level of performance on the indicators described in proposed § 200.14. Further, a State's methodology for identifying such schools would need to be consistent with the statutory requirement for the Academic Achievement, Academic Progress, Graduation Rate, and Progress in Achieving English Language Proficiency indicators to be given substantial weight individually, and much greater weight, in the aggregate, than indicator(s) of School Quality or Student Success. This clarification would help ensure a State's system of annual meaningful differentiation and system of identification are coherent to parents and the public, and send a consistent signal to educators and schools regarding what level of student progress and achievement is considered sufficient.

Proposed § 200.19(c) would further clarify the methodology States would use to identify schools with consistently underperforming subgroups of students by specifying that identification of these schools must be based on school performance in the system of annual meaningful differentiation over no more than two years. If data were considered over a longer period of time, it may not reflect the most current level of subgroup performance in the school, leading to inappropriate identification. Further, by ensuring identification following no more than two years of low subgroup performance, schools can receive the supports needed to help the subgroup improve prior to that particular cohort of students exiting the

<sup>15</sup> EDFacts Data Groups 695 and 696, School year 2013–14; September 4, 2015. [http://nces.ed.gov/ipeds/data/tables/ACGR\\_RE\\_and\\_characteristics\\_2013-14.asp](http://nces.ed.gov/ipeds/data/tables/ACGR_RE_and_characteristics_2013-14.asp).

school. Early identification of schools for targeted support and improvement also may result in increased achievement in such schools, which would help avoid subsequent identification for comprehensive support and improvement and avoid strain on State and local improvement capacity.

Proposed § 200.19(c) would also provide parameters around how a State must define “consistently underperforming,” with multiple suggested approaches. The accountability systems established in the ESSA require disaggregated information by subgroup in each of its components: long-term goals and measurements of interim progress, indicators, assessment participation rates, and annual meaningful differentiation. In this way, the statute signals the importance of including subgroups of students to the maximum extent possible. However, identification of schools specifically based on subgroup performance, and subsequent interventions to support improved outcomes for all students in the school, depends on a robust definition of “consistently underperforming.” For these reasons, proposed § 200.19(c) would suggest ways for States to define “consistently underperforming” to help ensure that each State system of identification meaningfully considers performance for subgroups of students. Given that there likely are numerous ways to establish a methodology for identifying consistently underperforming subgroups, we are especially interested in receiving public comment on whether the suggested methods in § 200.19 would result in meaningful differentiation and identification of schools; which additional options should be considered, if any; and which options, if any, in proposed § 200.19 should not be included or should be modified because they do not adequately identify underperforming subgroups of students.

#### Frequency and Timeline for Identification

Finally, proposed § 200.19 would clarify the timeline for identification of schools under the ESEA, as amended by the ESSA. The statute is clear that identification begins with the 2017–2018 school year and that a State must identify schools for comprehensive support and improvement at least once every three years, but does not indicate at which point during the year such identification must occur. Because a clear, regular timeline for identification of schools is critical to meet the needs of students, allow sufficient time for

planning meaningful interventions, and permit full and effective implementation of support and improvement plans, proposed § 200.19 would require identification of all schools by the beginning of each school year for which the school is identified and would clarify that the year for which the school is identified (e.g., the 2017–2018 school year) means the school year immediately following the year in which the State most recently measured the school’s performance on the indicators under proposed § 200.14 that resulted in the school’s identification (e.g., the 2016–2017 school year).

Further, proposed § 200.19 clarifies when State accountability systems under the ESEA, as amended by the ESSA, take effect, with the lowest-performing schools, high schools with low graduation rates, and schools with chronically low-performing subgroups in comprehensive support and improvement and schools with low-performing subgroups in targeted support and improvement identified at least once every three years starting in 2017–2018, and with schools that have consistently underperforming subgroups of students identified annually starting in 2018–2019. However, because identification of a school with chronically low-performing subgroups only occurs after such a school has implemented a targeted support and improvement plan and failed to meet the State’s exit criteria under proposed § 200.22, a State could not identify such schools in 2017–2018. Accordingly, proposed § 200.19 requires identification of schools with chronically low-performing subgroups for comprehensive support and improvement the second time a State identifies its lowest performing schools for comprehensive support and improvement, no later than the 2020–2021 school year, as title I schools with low-performing subgroups would have had an opportunity to implement a targeted support and improvement plan and demonstrate that they met the exit criteria at that time.

#### *Section 200.20 Data Procedures for Annual Meaningful Differentiation and Identification of Schools*

*Statute:* Section 1111(c)(4)(B) and (C) of the ESEA, as amended by the ESSA, requires States to annually measure indicators and meaningfully differentiate among all public schools in the State, including by using disaggregated data on each subgroup in a school that meets the minimum subgroup size set by the State under section 1111(c)(3). Section 1111(c)(4)(D)

requires States to identify low-performing schools for comprehensive support at least once every three years and to annually identify schools with consistently underperforming subgroups. The statute does not specify how data averaging procedures may be applied for purposes of measuring school performance on each indicator, or for reporting purposes, and how that interacts with the State’s minimum subgroup size.

Section 1111(c)(4)(F) contains requirements for including students that do not attend the same school in an LEA for the entire school year in State accountability systems. The statute indicates that the performance of any student enrolled for at least half of the school year must be included on each indicator in the accountability system; students enrolled for less than half of the school year in the same school may be excluded. For graduation rates, if a high school student enrolled for less than half of the school year drops out and does not transfer to another high school, such student must be included in the denominator for calculating the four-year adjusted cohort graduation rate and assigned either to the school the student most recently attended, or to the school where the student was enrolled for the greatest proportion of school days during grades 9 through 12.

*Current Regulations:* Section 200.20 describes how schools make AYP and clarifies that, for the purposes of determining AYP, a State is permitted to establish a uniform procedure for averaging data, which may include averaging data across school years and combining data across grades, within subject area and subgroup, in a school or LEA. Additionally, if a State averages data across school years, the State may average data from the school year for which the AYP determination is made with data from the immediately preceding one or two school years. Consistent with §§ 200.13 through 200.20, a State that averages data across school years must continue to meet annual assessment and reporting requirements, make annual AYP determinations for all schools and LEAs, and implement school improvement requirements.

Section 200.20(e) requires a State to include all students that have been enrolled in schools in an LEA for a full academic year in determining AYP for each LEA, but students that are not enrolled in the same school for the full academic year may be excluded from AYP determinations for the school. The current title I regulations do not define “full academic year.”

*Proposed Regulations:* Proposed § 200.20 would replace current title I regulations with regulations that would update and clarify how data averaging may be used in the statewide accountability system for annual meaningful differentiation and identification of schools under proposed §§ 200.18 and 200.19. The proposed regulations would retain the requirements of current § 200.20, while updating references to reflect new statutory requirements under the ESEA, as amended by the ESSA. The requirements retained from the current regulations would also be reordered for clarity.

Proposed § 200.20(a)(1)(ii)(A)–(B) would clarify that, if a State averages data across years, the State must continue to report data for a single year, without averaging, on State and LEA report cards under section 1111(h). Further, under proposed § 200.20(a)(1)(ii)(C), a State that averages data across years would be required to explain its uniform procedure for averaging data in its State plan and specify the use of such procedure in its description of the indicators used for annual meaningful differentiation in its accountability system on the State report card under section 1111(h)(1)(C)(i)(III).

Proposed § 200.20(a)(2) would retain requirements from the current regulations on combining data across grades and further clarify that a State choosing to combine data across grades must, consistent with the requirements for averaging data across years, use the same uniform procedure for all public schools; report data for each grade in the school on State and LEA report cards under section 1111(h); and, consistent with proposed § 200.20(a)(1)(ii)(C), explain its uniform procedure in its State plan and specify the use of such procedure on its State report card.

Proposed § 200.20(b) would restate, and restructure, the requirements on partial enrollment from section 1111(c)(4)(F). Section 200.20(b)(2)(ii) would clarify that the approach used by an LEA for assigning high school students who exit without a diploma and who do not transfer to another high school must be consistent with the approach established by the State for calculating the denominator of the four-year adjusted cohort graduation rate under proposed § 200.34(f). Additionally, proposed § 200.20(b)(2)(iii) would clarify that all students, regardless of their length of enrollment in a school within an LEA during the academic year, must be included for purposes of reporting on

the State and LEA report cards under section 1111(h) for such school year.

*Reasons:* Proposed § 200.20 would retain from the current regulations the flexibility for States to average data across years or combine data across grades, because the reliability of data used to make accountability determinations continues to be important for supporting systems that fairly measure the performance of all students and, to the greatest extent practicable, all subgroups of students in a school. Averaging data across school years, or across grades, in a school can increase the data available to consider as part of accountability determinations, improving reliability of accountability determinations and increasing the likelihood that a particular subgroup in a school will meet the State's minimum n-size. We propose to reorder the requirements in proposed § 200.20 to make the regulations easier to understand and to facilitate compliance.

Proposed § 200.20(a)(1)(ii) would also require that a State explain its uniform procedure for averaging data in its State plan and specify the use of such procedure on its annual State report card in order to increase transparency. Such information is important to help stakeholders understand how accountability determinations are made.

To be consistent with the proposed requirements for averaging data across years and create a coherent system, proposed § 200.20(a)(2) would clarify that States choosing to combine data across grades must report data individually for each grade in a school, use the same uniform procedure for combining data across grades in all schools, and explain the procedure in the State plan and specify its use in the State report card.

Proposed § 200.20(b) would clarify that the inclusion of students for accountability must be based on time enrolled in a school, rather than attendance, which we believe is more consistent with the new statutory requirements under section 1111(c)(4)(F) of the ESEA, as amended by the ESSA, which are intended to ensure accountability systems and reporting are maximally inclusive of all students and each subgroup of students, while promoting fairness in school accountability determinations by excluding students whose performance had little to do with a particular school because they were only enrolled for a short period of time. Furthermore, basing the inclusion of students on attendance could create a perverse incentive to discourage students who are low-performing from attending schools—contrary to the purpose of title

I to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.

#### *Section 200.21 Comprehensive Support and Improvement*

*Statute:* Section 1111(d) of the ESEA, as amended by the ESSA, requires a State to notify each LEA of any school served by the LEA that is identified for comprehensive support and improvement. Upon receiving such information from the State, section 1111(d)(1)(B) requires the LEA, in partnership with stakeholders, to design and implement a comprehensive support and improvement plan that is informed by the State's long-term goals and indicators described in section 1111(c)(4); includes evidence-based interventions; is based on a school-level needs assessment; identifies resource inequities; is approved by the school, LEA, and SEA; and upon approval and implementation, is monitored and periodically reviewed by the SEA.

With respect to any high school identified for comprehensive support and improvement due to low graduation rates, as described in section 1111(c)(4)(D)(i)(II), the State may permit differentiated improvement activities under section 1111(d)(1)(C) that utilize evidence-based interventions for schools that predominately serve students returning to school after exiting without a regular diploma or who are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements. Section 1111(d)(1)(C) also allows a State to exempt high schools with less than 100 students that are identified for comprehensive support and improvement due to low graduation rates from implementing the required improvement activities.

Section 1111(d)(1)(D) allows an LEA to provide all students enrolled in a school identified by the State for comprehensive support and improvement with the option to transfer to another public school served by the LEA, unless such an option is prohibited by State law.

Section 1111(d)(3)(A)(i)(I) also requires a State to establish statewide exit criteria for comprehensive support and improvement schools, which, if not satisfied within a State-determined number of years (not to exceed four years), must result in more rigorous State-determined action in the school, such as the implementation of interventions (which may address school-level operations).

*Current Regulations:* Sections 200.30 to 200.49 of the current title I

regulations require States and LEAs to ensure escalating improvement measures over time for title I schools that do not make AYP for consecutive years and require LEAs to implement specific strategies for students attending schools identified for each phase of improvement, based on the number of years a school has failed to make AYP.

*Proposed Regulations:* Proposed § 200.21 would replace the current regulations with regulations that clarify the statutory requirements under the ESEA, as amended by the ESSA, for States to help ensure that LEAs with schools identified for comprehensive support and improvement develop and implement plans that will be effective in increasing student academic achievement and school success.

#### Notice

Proposed § 200.21 would require that each State notify any LEA that serves a school identified for comprehensive support and improvement no later than the beginning of the school year for which the school is identified. Proposed § 200.21 would also require that an LEA that receives such a notification from the State promptly notify the parents of each student enrolled in the identified school, including, at a minimum, the reason or reasons for the school's identification and an explanation for how parents can be involved in developing and implementing the school's improvement plan. This notice must—

- Be in an understandable and uniform format;
- Be, to the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and
- Be, upon request by a parent or guardian who is an individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12102, provided in an alternative format accessible to that parent.

#### Needs Assessment

Proposed § 200.21 would require that an LEA with a school identified for comprehensive support and improvement complete, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a needs assessment for the school that examines—

- Academic achievement information based on the performance, on the State assessments in reading/language arts and mathematics, of all students and each subgroup of students in the school;

- The school's performance, including among subgroups of students, on all indicators and on the State's long-term goals and measurements of interim progress described in proposed §§ 200.13 and 200.14;

- The reason or reasons the school was identified for comprehensive support and improvement; and
- At the LEA's discretion, the school's performance on additional, locally selected indicators that are not included in the State's system of annual meaningful differentiation that affect student outcomes in the school.

#### LEA Development of Comprehensive Support and Improvement Plan

The proposed regulations would require an LEA with a school identified for comprehensive support and improvement to develop and implement a comprehensive support and improvement plan to improve student outcomes in the school. Specifically, the proposed regulations would require that the comprehensive support and improvement plan—

- Be developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents);
- Describe how early stakeholder input was solicited and taken into account in the plan's development, and how stakeholders will participate in the plan's implementation;
- Incorporate the results of the school-level needs assessment;
- Include one or more interventions (e.g., increasing access to effective teachers or adopting incentives to recruit and retain effective teachers; increasing or redesigning instructional time; interventions based on data from early warning indicator systems; reorganizing the school to implement a new instructional model; strategies designed to increase diversity by attracting and retaining students from varying socioeconomic backgrounds; replacing school leadership; in the case of an elementary school, increasing access to high-quality preschool; converting the school to a public charter school; changing school governance, closing the school; or, in the case of a public charter school, revoking or non-renewing the school's charter by its authorized public chartering agency consistent with State charter school law) that: (1) Are evidence-based; (2) are supported, to the extent practicable, by the strongest level of evidence that is available and appropriate to meet the needs of the school, as identified by the needs assessment, and by research conducted on a sample population or setting that overlaps with the

population or setting of the school to be served; and (3) may be selected from among State-established evidence-based interventions or a State-approved list of evidence-based interventions;

- Identify and address resource inequities by including, at a minimum, a review of LEA- and school-level resources among schools and, as applicable, within schools with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA under sections 1111(g)(1)(B) and 1112(b)(2) and per-pupil expenditures of Federal, State, and local funds reported annually under section 1111(h)(1)(C)(x), and, at the LEA's discretion, a review of LEA and school-level budgeting and resource allocation with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures and any other resource, including access and availability of advanced coursework, preschool programs, and instructional materials and technology;

- Be made publicly available by the LEA, including to parents consistent with the notice requirements described above; and

- Be approved by the school, the LEA, and the State.

Additionally, an LEA may have a planning year for a school identified for comprehensive support and improvement, during which the LEA must carry out the needs assessment and develop the school's comprehensive support and improvement plan to prepare for the successful implementation of the school's interventions. Such a planning year is limited to the school year in which the school was identified.

#### State Responsibilities

Proposed § 200.21 would require that a State review and approve each comprehensive support and improvement plan in a timely manner, as determined by the State, and take all actions necessary to ensure that each school and LEA develops and implements a plan that meets all of the requirements of proposed § 200.21 within the required timeframe. Further, the proposed regulations would require that the State monitor and periodically review each LEA's implementation of its plan.

#### Exit Criteria

Proposed § 200.21 would also require that the State establish uniform statewide exit criteria for schools implementing comprehensive support and improvement plans to help ensure continued progress to improve student



academic achievement. In establishing the exit criteria, the proposed regulations would require a State to ensure that a school meeting the exit criteria within a State-determined number of years, not to exceed four years, both increases student outcomes and no longer meets the criteria for comprehensive support and improvement under proposed § 200.19.

The proposed regulations would specify that, if a school does not meet the exit criteria, the State would require the LEA to conduct a new school-level needs assessment and, based on its results, amend its comprehensive support and improvement plan to—

- Address the reasons the school did not meet the exit criteria, including whether the school implemented the interventions with fidelity and sufficient intensity, and the results of the new needs assessment;

- Update how it will continue to address previously identified resource inequities and identify and address any new resource inequities consistent with the requirements to review those inequities in its original plan; and

- Implement additional interventions in the school that (1) must be determined by the State; (2) must be more rigorous and based on strong or moderate levels of evidence; (3) must be supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served; and (4) may address school-level operations, such as changes to budgeting, staffing, or the school day and year.

The proposed regulations would require that the LEA submit the amended plan to the State in a timely manner, as determined by the State. Upon receipt of the LEA's amended plan, proposed § 200.21 would require that the State review and approve the plan in a timely manner, as determined by the State, and take all actions necessary to ensure that each school and LEA meets the requirements of proposed § 200.21 to develop and implement the amended plan within the required timeframe. The proposed regulations would also require that the LEA make the amended plan publicly available, including to parents, consistent with the manner in which they provided the required notice described above.

Finally, the proposed regulations would require that a State increase its monitoring, support, and periodic review of each LEA's implementation of an amended comprehensive support and improvement plan based on a school's failure to meet the exit criteria.

#### State Discretion for Certain High Schools

Proposed § 200.21 would incorporate the flexibility in section 1111(d)(1)(C) for States with respect to certain high schools identified for low graduation rates. First, the proposed regulations would permit differentiated school improvement activities, as long as those activities still meet the requirements for schools in comprehensive support and improvement described above, including in a high school that predominantly serves students who (1) have returned to education after having exited high school without a regular high school diploma and (2) based on their grade or age, are significantly off track to earn sufficient academic credits to meet the State's graduation requirements. Second, the proposed regulations would permit a State to allow an LEA to forgo implementation of a comprehensive support and improvement plan in a high school that was identified under proposed § 200.19 for low graduation rates, but has a total enrollment of less than 100 students.

#### Public School Choice

Proposed § 200.21 would clarify the option for students to transfer to a different public school included in section 1111(d)(1)(D) by precluding the option to transfer from a school identified for comprehensive support and improvement to another school identified for comprehensive support and improvement and specifying that, if such an option is inconsistent with a federal desegregation order, the LEA must petition and obtain court approval for such transfers.

*Reasons:* Proposed § 200.21 would provide clarity where the statute is ambiguous and reorganize the statutory requirements to facilitate a better understanding of, and compliance with, those requirements. Specifically, proposed § 200.21 would clarify the requirements regarding notice, development, approval, and implementation of comprehensive support and improvement plans, including a strengthened role for the State in supporting such implementation in schools that fail to meet the State's exit criteria over time.

#### Notice

Before a comprehensive support and improvement plan is implemented in an identified school, the statute requires the LEA to develop such a plan in partnership with stakeholders, including parents. In order to ensure that parents are meaningfully included in this process, proposed § 200.21

would require an LEA to provide notice to parents of the school's identification in order to ensure that the notice is not only understandable and clear about why a school was identified, but also enables parents to be engaged in development and implementation of the comprehensive support and improvement plan, as required by the statute. These requirements would provide greater transparency and help parents understand the need for, and the process for developing, a school's comprehensive support and improvement plan, including the needs assessment, so that they can be meaningful participants in school improvement activities and take an active role in supporting their child's education. Parents and guardians with disabilities or limited English proficiency have the right to request notification in accessible formats. We encourage States and LEAs to proactively make all information and notices they provide to parents and families accessible, helping to ensure that parents are not routinely requesting States and LEAs to make information available in alternative formats. For example, one way to ensure accessibility would be to provide orally interpreted and translated notifications and to follow the requirements of section 508 of the Rehabilitation Act.

#### Needs Assessment

To inform the development of a comprehensive support and improvement plan, an LEA with a school identified for comprehensive support and improvement must complete a needs assessment for the school. The proposed regulations would specify certain elements that must be part of the school-level needs assessment, ensuring that a needs assessment is conducted in partnership with stakeholders; is informed by relevant data, including student performance on the State academic assessments and other measures the LEA determines are relevant to their local context; and examines the reason the school was identified for comprehensive support and improvement. These elements would provide a sound basis for a comprehensive support and improvement plan, and would increase the likelihood that such a plan would be effective, by examining multiple dimensions of school performance and specifically analyzing the reason or reasons the school was identified.

## LEA Development of Comprehensive Support and Improvement Plan

Proposed § 200.21 would also clarify requirements for the development of the comprehensive support and improvement plan. First, the regulations would require (1) meaningful, ongoing stakeholder input in the development and implementation of plans, and (2) that the plans, and any amendments to the plans, be made publicly available in a manner that will ensure parents can access them. A plan cannot be implemented in partnership with parents, teachers, and principals if the plan itself is not easily accessible.

Second, the proposed regulations would clarify that the evidence requirements for comprehensive support and improvement plans are based on the definition of “evidence-based” in section 8101(21) of the ESEA, as amended by the ESSA. Specifically, proposed § 200.21 would specify that one or more of a school’s activities and interventions, as opposed to all activities and interventions, must be evidence-based, and would require an LEA to take into consideration, in selecting an evidence-based intervention, the strongest level of evidence that is available and appropriate and its relevance to the context in which the intervention will be implemented, if practicable. Schools implementing comprehensive support and improvement plans are more likely to see improvements if they employ particular strategies that are grounded in evidence. Because the evidence base for interventions in low-performing schools is relatively nascent and still growing, proposed § 200.21 would help support LEAs in making prudent, smart choices when selecting among evidence-based interventions by encouraging the use of interventions that are supported by the strongest level of evidence that is available and appropriate to meet the needs of the school, including, where possible, evidence suggesting that the intervention was effective for an overlapping population or in an overlapping setting to those of the identified school.

Third, proposed § 200.21 would specify minimum requirements for the LEA’s efforts to review and address resource inequities, which may include LEA- and school-level budgeting. Specifically, at a minimum, the identification of resource inequities must include a review of disproportionate rates, among schools and, as applicable, within schools, of ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures of Federal, State, and local

funds—using data already required to be collected and reported under the ESEA, as amended by the ESSA. In addition, we propose clarifications that would emphasize the importance of equity and access in other areas (e.g., access to advanced coursework or high-quality preschool programs). In total, these clarifications would encourage LEAs to correct deficits in resources that will be critical to developing and implementing a successful improvement plan for schools in need of comprehensive support.

Finally, the proposed regulations would clarify an LEA may have, with respect to each school identified for comprehensive support and improvement, a planning year limited to the school year in which the school was identified. This would allow time to prepare for the successful implementation of interventions specified in the plan by, for example, consulting with stakeholders, conducting a needs assessment, and identifying resource inequities and evidence-based interventions, and to ensure that such planning does not inordinately delay the full implementation of interventions that are needed to support improved student achievement and school success.

## State Responsibilities

The proposed regulations would clarify the State’s responsibilities regarding plan approval. Specifically, the State would be required to conduct a timely review of the LEA’s plan and take necessary actions to ensure that each school and LEA is able to meet all of the requirements of proposed § 200.21 to develop and implement the plan within the required timeframe. These clarifications would ensure plans are approved expeditiously and meet key statutory requirements, and prevent significant delays at the LEA or school level in implementation of activities and interventions that will help improve student achievement and outcomes in identified schools.

## Exit Criteria

Further, to ensure continued progress in student academic achievement and school success, proposed § 200.21 would require the State to establish uniform statewide exit criteria for any school implementing a comprehensive support and improvement plan, including that the school no longer meets the criteria for identification under proposed § 200.19(a) and demonstrates improved student outcomes. Requiring improved student outcomes would help ensure that schools do not exit improvement status

before making meaningful gains in performance, consistent with the statutory requirement in section 1111(d)(3), that a State ensure schools identified for comprehensive support and improvement achieve continued progress to improve student academic achievement and school success.

Proposed § 200.21 also would clarify additional actions a school identified for comprehensive support and improvement must take if it does not meet the exit criteria. In particular, as noted above, schools implementing comprehensive support and improvement plans are more likely to see improvements if they employ strategies that are grounded in research. In addition, the proposed regulations would ensure the State has a larger role in supporting an LEA in the development and oversight of an amended comprehensive support and improvement plan after its initial plan was unsuccessful, which is necessary when an LEA’s plan for improvement has been ineffective.

## Section 200.22 Targeted Support and Improvement

*Statute:* Section 1111(d) of the ESEA, as amended by the ESSA, requires a State to notify each LEA of any school served by the LEA in which any subgroup of students is consistently underperforming, as described in section 1111(c)(4)(C)(iii), as well as ensure such an LEA provides notification to identified schools. Upon receiving notification from the LEA, the school, in partnership with stakeholders, must design a school-level targeted support and improvement plan to improve student outcomes based on the indicators in the statewide accountability system. The plan must be informed by all indicators described in section 1111(c)(4)(B), including student performance against the State’s long-term goals described in section 1111(c)(4)(A); include evidence-based interventions; be approved by the LEA prior to implementation; be monitored, upon submission and during implementation, by the LEA; and result in additional action following unsuccessful implementation of the plan after a number of years determined by the LEA.

Section 1111(d) requires additional targeted support for schools with any subgroup of students performing at or below the level of students in the lowest-performing five percent of all title I schools identified for comprehensive support and improvement under section 1111(c)(4)(D)(i)(I). In addition to implementing targeted support and

improvement plans as described in clauses (i) through (iv) in section 1111(d)(2)(B), schools identified for additional targeted support must also identify resource inequities, which may include a review of LEA- and school-level budgeting, to be addressed through plan implementation.

Section 1111(d) also requires a State to establish statewide exit criteria for schools requiring additional targeted support, as described in section 1111(d)(2)(C). If these exit criteria are not met within a State-determined number of years, the State must identify title I schools requiring additional targeted support as comprehensive support and improvement schools.

*Current Regulations:* Sections 200.30 through 200.49 of the current title I regulations require States and LEAs to ensure improvement measures escalate consequences over time for title I schools that do not make AYP for consecutive years. In addition, LEAs must implement specific strategies for students attending schools identified for each phase of improvement, based on the number of years a school has failed to make AYP.

*Proposed Regulations:* Proposed § 200.22 would replace the current regulations with regulations that clarify the statutory requirements in the ESEA, as amended by the ESSA, for States and LEAs to ensure that schools identified for targeted support and improvement will implement plans that are effective in increasing student academic achievement for the lowest-performing students in those schools.

#### Notice

Proposed § 200.22 would require a State to notify each LEA that serves one or more schools identified for targeted support and improvement of the identification, and would then require each LEA to notify each identified school, no later than the beginning of the school year for which the school is identified, including notice of the subgroup or subgroups that have been identified by the State as consistently underperforming or low-performing, or, at the State's discretion, the subgroup or subgroups that are identified under proposed § 200.15(b)(2)(iii) for low assessment participation rates.

Proposed § 200.22 would also require that an LEA that receives such a notification from the State promptly notify the parents of each student enrolled in the identified school so that parents may be meaningfully involved in improvement efforts. The parental notice would be required to be understandable and accessible in the same manner as the notice under

proposed § 200.21(b)(1)–(3) and include at a minimum, the reason or reasons for identification and an explanation of how parents can be involved in developing and implementing the school's support and improvement plan, consistent with the statutory requirement that parents serve as partners in the development of such plans.

#### Development of Targeted Support and Improvement Plans

The proposed regulations would require a school identified for targeted support and improvement to develop and implement a plan that addresses the reason or reasons for identification and that will improve student outcomes for the lowest-performing students in the school. Specifically, the proposed regulations would require that the targeted support and improvement plan—

- Be developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents);
- Describe, at a minimum, how early stakeholder input was solicited and taken into account in the plan's development, and how stakeholders will participate in the plan's implementation;
- Be designed to improve student performance for the lowest-performing students on each of the indicators in the statewide accountability system that led to the school's identification, or, in the case of a school identified under proposed § 200.15(b)(2)(iii) to improve assessment participation rates in the school;
- Take into consideration the school's performance on all indicators in the statewide accountability system and student performance against the State's long-term goals and measurements of interim progress, including student academic achievement on each of the assessments required under section 1111(b)(2)(B)(v), and, at the school's discretion, locally selected indicators that are not included in the State's system of annual meaningful differentiation that affect student outcomes in the school;
- For any school operating a schoolwide program under section 1114 of the ESEA, as amended by the ESSA, address the needs identified by the needs assessment required under section 1114(b)(6);
- Include one or more interventions that (1) must be evidence-based; (2) must be appropriate to address the reason or reasons for identification and to improve student outcomes for the lowest-performing students in the

school, consistent with the requirement in section 1111(d)(2)(B) of the ESEA, as amended by the ESSA; (3) must be, to the extent practicable, supported by research conducted on a sample population or setting that overlaps with the population or setting of the school to be served; and (4) may be selected from a State-approved list of evidence-based interventions;

- Be submitted by the school to the LEA for review and approval; and
- For a school with low-performing subgroups as described under proposed regulations in § 200.19(b)(2), identify and address resource inequities that affect the low-performing subgroup by including, at a minimum, a review of LEA- and school-level resources among schools and, as applicable, within schools with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA under sections 1111(g)(1)(B) and 1112(b)(2) and per-pupil expenditures of Federal, State, and local funds reported annually under section 1111(h)(1)(C)(x), and, at the LEA's discretion, a review of LEA- and school-level budgeting and resource allocation with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures and any other resource, including access and availability of advanced coursework, preschool programs, and instructional materials and technology.

Additionally, a school identified for targeted support and improvement due to consistently underperforming or low-performing subgroups of students may have a planning year during which the school must carry out stakeholder engagement, selection of interventions, and other activities necessary to prepare for successful implementation of the plan. The planning year is limited to the school year in which the school was identified.

#### LEA Responsibilities

The proposed regulations would also require that an LEA review and approve each targeted support and improvement plan in a timely manner and take all actions necessary to ensure that each school is able to meet all of the requirements of proposed § 200.22 to develop and implement the plan within the required timeframe. Further, the proposed regulations would require that the LEA monitor each school's implementation of its plan. Finally, the proposed regulations would require that the LEA make each targeted support and improvement plan, and any amendments to the plan, publicly available, including to parents

consistent with the manner in which the LEA is required to provide notice as described above.

#### Exit Criteria

The proposed regulations would require that the LEA establish uniform exit criteria for schools implementing targeted support and improvement plans, except for title I schools with low-performing subgroups as described in proposed § 200.19(b)(2), and make the exit criteria publicly available. The proposed regulations would require that, in establishing the exit criteria, an LEA ensure that a school meeting the exit criteria successfully implemented its targeted support and improvement plan such that it no longer meets the criteria for identification and has improved student outcomes for its lowest-performing students, including each subgroup of students that was identified as consistently underperforming, or in the case of a school identified under proposed § 200.15(b)(2)(iii), met the requirement for student participation in assessments, within an LEA-determined number of years.

If a school does not meet the exit criteria within an LEA-determined number of years, the proposed regulations specify that the LEA would:

- Require the school to amend its targeted support and improvement plan to include additional actions that address the reasons the school did not meet the exit criteria and encourage the school to include interventions that meet a higher level of evidence consistent with section 8101(21) than the interventions required to be included in the school's original plan or to increase the intensity of effective interventions included in the school's original plan;
- Review and approve, in the same manner in which the LEA reviewed and approved the original plan, the amended targeted support and improvement plan; and
- Increase its monitoring and support of the school's implementation of the plan.

#### Schools With Low-Performing Subgroups Requiring Additional Targeted Support

For a school with one or more low-performing subgroups (*i.e.*, subgroups that are performing as poorly as students in the lowest-performing schools in the State) that is identified for targeted support and improvement, as described in proposed § 200.19(b)(2), proposed § 200.22 would require its targeted support and improvement plan to identify and address resource

inequities that affect the low-performing subgroup or subgroups. This would include, at a minimum, a review of LEA- and school-level resources among schools and, as applicable, within schools with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA under sections 1111(g)(1)(B) and 1112(b)(2) and per-pupil expenditures of Federal, State, and local funds reported annually under section 1111(h)(1)(C)(x), and may include a review of LEA- and school-level budgeting and resource allocation with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures and any other resource, such as access and availability of advanced coursework, preschool programs, and instructional materials and technology.

Further, for a title I school with one or more low-performing subgroups that is identified for targeted support and improvement, the proposed regulations would require that the State establish uniform statewide exit criteria that, at a minimum, ensure that each such school meeting the exit criteria has improved student outcomes for its lowest-performing students, including each subgroup identified as low-performing, and no longer meets the criteria for identification as a targeted support and improvement school. If such a school does not meet the uniform statewide exit criteria for low-performing targeted support and improvement title I schools after a State-determined number of years not to exceed three years, the State would be required to identify that school as a comprehensive support and improvement school, consistent with the requirement in section 1111(c)(3)(D) that a State identify such schools for comprehensive support and improvement at least every three years.

*Reasons:* Proposed § 200.22 would provide clarity where the statute is ambiguous and reorganize the statutory requirements to facilitate a better understanding of, and compliance with, those requirements. Specifically, proposed § 200.22 would clarify the requirements regarding notice, development, approval, and implementation of targeted support and improvement plans, including provisions to strengthen the rigor and increase effective implementation of plans in schools that fail, over time, to meet exit criteria established by the LEA or State.

#### Notice

Before a targeted support and improvement plan is implemented, the

LEA must provide notice to parents of the school's identification. The proposed regulations would clarify the requirements of such notice, specifically that the notice is timely, understandable, and accessible to all parents, including those with limited English language proficiency and disabilities. Moreover, the proposed regulations would require the notice to clearly explain to parents why a school was identified and how parents can be involved in developing and implementing the school's targeted support and improvement plan, consistent with the statutory requirement for parents to serve as partners in developing these plans. The proposed requirements would enable parents to become meaningfully and actively engaged in efforts to improve their child's school by creating a mechanism for parents to learn how they can become involved in the development and administration of the plan and the issues the plan will be designed to address.

#### Development of Targeted Support and Improvement Plans

Proposed § 200.22 would also clarify the requirements for the development of the targeted support and improvement plan. First, these requirements would require meaningful, ongoing stakeholder input in the development and implementation of targeted support and improvement plans, as well as that the plans be made available to the public, particularly to ensure transparency for parents of enrolled students and those who are members of consistently underperforming or low-performing subgroups. Plans cannot be implemented in partnership with parents, teachers, and principals if the plan itself is not easily accessible.

Second, the proposed regulations would clarify that the evidence requirements for targeted support and improvement plans are based on the definition of "evidence-based" in section 8101(21) of the ESEA, as amended by the ESSA. Specifically, proposed § 200.22 would require that one or more of a school's activities and interventions, as opposed to all activities, be evidence-based and would require certain considerations regarding the selection of evidence, if practicable. Schools implementing targeted support and improvement plans are more likely to see improvements for low-performing students, including low-performing subgroups of students, if they employ strategies that are grounded in research. Because the evidence base for interventions in low-performing schools that will support the lowest-performing

students is nascent, proposed § 200.22 would help support schools in making choices when selecting among evidence-based interventions by encouraging the use of interventions supported by the strongest level of evidence that is available and appropriate based on the needs of the school and that have been proven effective in a setting or sample population that overlaps with the identified school and its needs. This, in turn, would help support effective implementation of the overall plan and improvement in student outcomes for the school as a whole, including the subgroups that are struggling.

Finally, the proposed regulations would clarify that a school identified for targeted support and improvement due to low-performing or consistently underperforming subgroups of students may have a planning year limited to the school year in which the school was identified. This would allow time for the activities necessary to prepare for the successful implementation of interventions specified in the plan, including consulting with stakeholders, analyzing the reasons the school was identified for targeted support, and selecting appropriate evidence-based interventions to address those reasons, and to ensure that such planning does not inordinately delay the full implementation of interventions that are needed to support improved student achievement and school success.

#### LEA Responsibilities

The proposed regulations would clarify that the targeted support and improvement plan must be submitted by the school to the LEA for review and approval. The LEA would be required to conduct a timely review of the plan and take all actions necessary to ensure that each school is able to meet all of the requirements of proposed § 200.22 to develop and implement the plan within the required timeframe. Further, LEAs would be required to make the approved plans and all approved amendments to the plans publicly available. These clarifications are intended to ensure that plans are approved expeditiously, meet key statutory requirements, and are transparent and widely available to the public, and to prevent significant delays in the implementation of activities and interventions that will help improve student achievement and outcomes for low-performing students, including consistently underperforming subgroups, in identified schools.

#### Exit Criteria

Proposed § 200.22 would make clear that each LEA must establish and make public exit criteria for schools

implementing targeted support and improvement plans in order to meet the statutory requirement that an LEA must require a school that unsuccessfully implements its targeted support and improvement plan to take additional action. These exit criteria must, at a minimum, require that the school no longer meet the criteria for identification as a school for targeted support and improvement and demonstrate improved academic achievement for its lowest-performing students, including underperforming subgroups. These criteria must also be tailored to consider participation in statewide assessments in States that choose to identify schools with low participation rates for targeted support and improvement under proposed § 200.15(b)(2)(iii). Overall, this structure is similar to the parameters for exit criteria for comprehensive support and improvement so that there is consistency across the accountability system. Further, these clarifications would help make clear that schools improving educational outcomes are able to exit targeted support and improvement status, while providing safeguards to ensure that consistently underperforming subgroups do not struggle indefinitely if plans are inadequate or ineffectively implemented, and that schools are provided with additional help and support, when needed.

#### Schools With Low-Performing Subgroups Requiring Additional Targeted Support

Proposed § 200.22 would clarify and reorganize the statutory requirements that, in the case of a school with low-performing subgroups that are performing as poorly as all students in the lowest-performing five percent of title I schools, the school's targeted support and improvement plan also identifies and reviews resource inequities and their effect on each low-performing subgroup in the school. The proposed regulations would ensure this review is aligned with the review that would be required in comprehensive support and improvement plans, creating coherence across the statewide accountability system. Further, these clarifications are intended to emphasize the importance of equity and encourage LEAs and schools to correct resource disparities (e.g., disproportionate rates with respect to ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures) that will be critical to developing and implementing successful support and improvement plans for schools identified for targeted support and improvement.

Additionally, proposed § 200.22 would clarify the State-developed exit criteria for title I schools with low-performing subgroups and ensure that such a school that has not improved is identified for comprehensive support and improvement on the same timeline on which the State identifies schools in need of comprehensive support and intervention, consistent with 200.19(d)(1)(i). If the targeted support and improvement plan developed by the school has not helped its lowest-performing students, including low-performing subgroups, improve, it is imperative that these students receive the same supports, resources, and attention as similarly performing students in the bottom five percent of schools—those provided by the LEA for schools in comprehensive support and improvement. While many schools identified for comprehensive support and improvement demonstrate low performance among all students, LEAs and the State must also take responsibility and rigorous action to improve student outcomes for schools with low-performing subgroups, particularly when a school-developed improvement plan has not been effective. By providing for comprehensive support and improvement in schools with chronically low-performing subgroups, proposed § 200.22 would help States and LEAs meet the purpose of title I: “providing all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”

#### Section 200.23 State Responsibilities To Support Continued Improvement

*Statute:* Section 1111(d)(3)(A)(ii) of the ESEA, as amended by the ESSA, requires each State to provide support for LEA and school improvement, including the periodic review of resource allocation to support school improvement in LEAs serving significant numbers of schools identified for either comprehensive support and improvement or targeted support and improvement. Section 1111(d)(3)(A)(iii) requires each State to provide technical assistance to each of its LEAs serving significant numbers of schools identified for either comprehensive support and improvement or targeted support and improvement. Section 1111(d)(3)(B)(i) allows a State to take additional improvement actions in any LEA serving a significant number of schools identified for comprehensive support and improvement and not meeting State-established exit criteria or any LEA serving a significant number of

schools identified for targeted support and improvement. Section 1111(d)(3)(B)(ii) allows a State to establish alternative evidence-based, State-determined strategies that may be used by LEAs to assist schools identified for comprehensive support and improvement, consistent with State law.

*Current Regulations:* Section 200.49 describes an SEA's responsibilities to make technical assistance available to schools that have been identified for improvement, corrective action, or restructuring and requires an SEA to take additional actions if it determines that an LEA has failed to carry out its school improvement responsibilities. Section 200.50(a)(1)(ii) requires an SEA to annually review each of its LEAs receiving title I funds to determine whether the LEA is carrying out its responsibilities with respect to school improvement.

*Proposed Regulations:* Proposed § 200.23 would clarify the statutory requirements in the ESEA related to continued support for school and LEA improvement.

#### State Review of Resource Allocation

Proposed § 200.23(a) would require each State to periodically review resource allocations for each LEA serving significant numbers of schools identified either for comprehensive or targeted support and improvement. The proposed regulations would further specify that the required review must consider allocations between LEAs and between schools and any inequities identified in school support and improvement plans consistent with proposed § 200.21(d)(4) and § 200.22(c)(7), and would require each State to take action, to the extent practicable, to address any resource inequities identified during its review.

#### State Responsibilities for Technical Assistance

Proposed § 200.23(b) would require each State to describe in its State plan the technical assistance it will provide to each of its LEAs serving significant numbers of schools identified for either comprehensive support and improvement or targeted support and improvement. The proposed regulations would specify minimum requirements for such technical assistance, including a requirement that the State describe how it will assist LEAs in developing and implementing comprehensive support and improvement plans and ensuring that schools develop and implement targeted support and improvement plans, conducting school-level needs assessments, selecting

evidence-based interventions, and reviewing and addressing resource inequities.

#### Additional State Action To Support LEA Improvement

The proposed regulations also would permit a State to take certain additional improvement actions consistent with section 1111(d)(3)(B) of the ESEA, as amended by the ESSA. Proposed § 200.23(c)(1) would permit a State to take additional improvement actions in (1) any LEA, or authorized public chartering agency consistent with State charter school law, serving a significant number of schools identified for comprehensive support and improvement and not meeting State-established exit criteria, or (2) any LEA, or authorized public chartering agency consistent with State charter school law, serving a significant number of schools implementing targeted support and improvement plans. Such actions could include, for each school that does not meet State-established exit criteria following implementation of a comprehensive support and improvement plan, reorganizing the school to implement a new instructional model; replacing school leadership; converting the school to a public charter school; changing school governance; closing the school; or, in the case of a public charter school, revoking or non-renewing the school's charter consistent with State charter school law.

In addition, proposed § 200.23(c)(2) would allow a State to establish an exhaustive or non-exhaustive list of State-approved, evidence-based interventions for use in schools implementing comprehensive or targeted support and improvement plans. Proposed § 200.23(c)(3) would permit a State to establish, or to use previously developed and established, evidence-based, State-determined interventions, which may include whole-school reform models, for use by LEAs to assist schools identified for comprehensive support and improvement. Proposed § 200.23(c)(4) would allow a State to establish a process for review and approval of amended targeted support and improvement plans developed following a school's unsuccessful implementation of its targeted support and improvement plan, consistent with proposed § 200.22(e)(2).

*Reasons:* The proposed regulations would clarify State responsibilities to provide support and technical assistance to LEAs with significant numbers of schools identified for either comprehensive support and improvement or targeted support and

improvement. A key purpose of the proposed regulations is to ensure that the support and technical assistance from the State required by section 1111(d)(3)(A) is provided in a timely manner to support LEAs. The proposed regulations would also reinforce the LEA's role in development and implementation of effective support and improvement plans for low-performing schools. Similarly, the proposed regulations would require States to periodically review and take action, to the extent practicable, to address any resource inequities uncovered by their review of resource allocation between LEAs and schools; such action would support effective implementation of improvement plans by helping to coordinate actions at the State, district, and school levels and promote making sufficient resources available to support improvement. We encourage States to time their periodic review of resource allocation to align with existing, ongoing processes for reviewing the support they provide to LEAs and schools, such as each time the State submits its title I plan to the Department, or each time it identifies its lowest-performing schools.

The proposed regulations also would help ensure that the technical assistance provided by States is aligned with the statutory school improvement requirements, including those related to conducting needs assessments for schools identified for comprehensive support and improvement, the use of evidence-based interventions, and review of resource inequities. Such technical assistance is essential to building local capacity at both the LEA and school levels to carry out critical new responsibilities under the ESSA, including greater use of evidence-based interventions.

In addition, the proposed regulations would clarify State authority to take additional actions aimed at ensuring effective local implementation of comprehensive and targeted support and improvement plans. For example, the proposed regulations specify that States may take additional improvement actions in LEAs, as well as in authorized public chartering agencies consistent with State charter school law, so that States have tools to support the capacity of these entities to help improve low-performing schools. Further, permitting States to establish or maintain lists of evidence-based interventions would facilitate the selection and implementation of evidence-based improvement actions by LEAs with schools identified for improvement. The proposed regulations also would clarify that the alternative, evidence-based,

State-determined strategies authorized by section 1111(d)(3)(B)(ii) may include whole-school reform strategies that could simplify LEA efforts to identify appropriate, comprehensive approaches to turning around their lowest-performing schools.

Finally, the proposed regulation recognizes the critical role of States in providing additional support to schools that were identified for targeted support and improvement and did not implement their plans successfully, by permitting States to establish a review and approval process for such schools' amended targeted support and improvement plans. Implementation of a State-level review and approval process would help ensure that LEAs and affected schools benefit from the State's experience in working with schools facing similar challenges and increase the likelihood that the additional actions proposed for such schools are of sufficient rigor to ensure meaningful improvement for consistently underperforming and low-performing subgroups of students.

#### *Section 200.24 Resources To Support Continued Improvement*

*Statute:* Section 1003 of the ESEA, as amended by the ESSA, provides dedicated resources for school improvement.

Under section 1003(a), States must reserve seven percent of title I, part A allocations for school improvement, at least 95 percent of which must be distributed to LEAs either competitively or by formula to serve schools implementing comprehensive or targeted support and improvement activities, including the implementation of evidence-based interventions, under section 1111(d). Section 1003(c) allows States to award subgrants for up to four years, which may include one planning year.

Under section 1003, States must prioritize funds for LEAs that serve high numbers, or a high percentage, of schools identified for comprehensive support and improvement; LEAs with the greatest need for such funds, as defined by the State; and LEAs with the strongest commitment to improving student achievement and outcomes. Additionally, subgrants must be of sufficient size to enable an LEA to effectively implement selected strategies, and LEAs receiving a subgrant must represent the geographic diversity of the State.

Section 1003(b)(1)(B) allows a State, with the approval of the LEA, to directly provide for the improvement activities required under section 1111(d) or to arrange for their provision through other

entities such as school support teams, educational service agencies, or nonprofit or for-profit external providers with expertise in using evidence-based strategies to improve student achievement, instruction, and schools. Additionally, under section 1003(b)(2), States are required to use any funds not distributed to LEAs to establish a method to allocate funds under section 1003, to monitor and evaluate the use of such funds by LEAs, and, as appropriate, to reduce barriers and provide operational flexibilities for schools in the implementation of comprehensive and targeted support and improvement activities under section 1111(d). In addition, section 1003(i) requires States to include on State report cards a list of all LEAs and schools receiving funds under section 1003, including the amount of funds each school received and the types of strategies each school implemented.

To receive funds under section 1003, an LEA must submit an application to the State that includes, at a minimum, a description of how the LEA will carry out its responsibilities for school improvement under section 1111(d), including how the LEA will: Help schools develop and implement comprehensive and targeted support and improvement plans; monitor schools receiving funds under section 1003; use a rigorous review process to recruit, screen, select, and evaluate any external partners with whom the LEA will partner; align other Federal, State, and local resources to carry out the activities supported with funds under section 1003; and, as appropriate, modify practices or policies to provide operational flexibility that enables full and effective implementation of school improvement plans.

*Current Regulations:* Section 200.99 requires each State to reserve two percent of its fiscal year 2003 and 2004 title I, part A allocation, and four percent of its title I, part A allocation for each succeeding fiscal year, to carry out State and local responsibilities for school improvement under sections 1116 and 1117 of the ESEA, as amended by NCLB.

Section 1003(g) of the ESEA, as amended by NCLB, authorized an additional source of school improvement funding through the School Improvement Grants (SIG) program, which was first funded in fiscal year 2007 and which provided formula grants to States that then were competitively subgranted to LEAs to support the activities required under sections 1116 and 1117.

Following a one-time appropriation of \$3 billion for SIG under the American

Recovery and Reinvestment Act of 2009, the Department promulgated regulations to significantly strengthen the SIG program.

*Proposed Regulations:* Proposed § 200.24 would clarify the new requirements included in the ESEA, as amended by the ESSA, for funds that the State must set aside for LEAs to support schools implementing comprehensive and targeted support and improvement plans.

#### *LEA Eligibility*

The proposed regulations would clarify that an LEA is eligible for school improvement funds under section 1003(a) if it has one or more schools identified for comprehensive support and improvement or targeted support and improvement and if it applies to serve each school identified for comprehensive support and improvement before applying to serve a school identified for targeted support and improvement. Proposed § 200.24 would also clarify that funds may not be used to serve schools that are identified for targeted support and improvement under proposed § 200.15(b)(2)(iii) for low assessment participation rates, if the State chooses to identify such schools for targeted support and improvement, because funds for school improvement provided under section 1003 are intended to serve low-performing schools, including schools with low-performing subgroups, that are identified on the basis of the indicators under proposed § 200.14.

#### *LEA Application*

Proposed § 200.24 would require that an LEA seeking school improvement funds submit an application to the State that includes, at a minimum—

- A description of one or more evidence-based interventions based on strong, moderate, or promising evidence consistent with section 8101(21) that will be implemented in each school the LEA proposes to serve;

- A description of how the LEA will: (1) Carry out its responsibilities to develop and implement a comprehensive support and improvement plan that meets the requirements in proposed § 200.21 for each school identified for comprehensive support and improvement that the LEA applies to serve, and (2) support each school identified for targeted support and improvement that the LEA applies to serve in developing, approving, and implementing a targeted support and improvement plan under proposed § 200.22;



- A budget indicating how it will allocate school improvement funds among schools identified for comprehensive and targeted support and improvement that it intends to serve;
- The LEA's plan to monitor each school for which the LEA receives school improvement funds, including its plan to increase monitoring of schools that do not meet State or LEA exit criteria, as applicable;
- A description of the rigorous review process that the LEA will use to recruit, screen, select, and evaluate any external providers with which the LEA intends to partner;
- A description of how the LEA will align other Federal, State, and local resources to carry out the activities in the schools it applies to serve and sustain effective activities in such schools after funding under section 1003 is completed;
- As appropriate, a description of how the LEA will modify practices and policies to provide operational flexibility, including with respect to school budgeting and staffing, that will help enable full and effective implementation of the school's comprehensive or targeted support and improvement plan under proposed §§ 200.21 and 200.22;
- For an LEA that plans to allow a school to use the first year, or a portion of the first year, it receives school improvement funds for planning activities, a description of those planning activities, the timeline for implementation of those activities, and a description of how those activities will support successful implementation of the school's comprehensive or targeted support and improvement plan; and
- An assurance that each school the LEA proposes to serve will receive all of the State and local funds it would have otherwise received.

#### State Allocation of Funds

The proposed regulations would also clarify the State's responsibilities in allocating school improvement funds to LEAs. Specifically, they would require that a State review, in a timely manner, each LEA application and award funds to an LEA application that meets the requirements of the proposed regulations in an amount that is of sufficient size to enable the LEA to effectively implement the comprehensive or targeted support and improvement plan. Under the proposed regulations, to be of sufficient size, each award would be at least \$50,000 per school identified for targeted support and improvement the LEA is applying

to serve and at least \$500,000 for each school identified for comprehensive support and improvement the LEA is applying to serve, except that a State could conclude, based on a demonstration from the LEA in its application, that a smaller award would be sufficient to successfully implement the plan in a particular school.

If a State has insufficient school improvement funds to make awards to all eligible LEAs that are of sufficient size, the proposed regulations would require that a State, whether through formula or a competition, award funds to an LEA applying to serve a school identified for comprehensive support and improvement before awarding funds to an LEA applying to serve a school identified for targeted support and improvement. Further, the proposed regulations would require that a State prioritize its funding such that it—

- Gives priority in funding to an LEA that demonstrates the greatest need for the funds, as determined by the State, based, at a minimum, on the number or percentage of schools in the LEA implementing either a comprehensive or targeted support and improvement plan and based on the State's review of resource inequities among and within LEAs, required under proposed § 200.23(a);
- Gives priority in funding to an LEA that demonstrates the strongest commitment to using the school improvement funds to enable the lowest-performing schools to improve, taking into consideration, with respect to each school the LEA proposes to serve: (1) The proposed use of evidence-based interventions that are supported by the strongest level of evidence available; and (2) commitment to family and community engagement; and
- Considers geographic diversity within the State. The proposed regulations would further require that a State make awards to LEAs either on a competitive or formula basis for not more than four years, which may include a planning year. If a State permits an LEA to have a planning year with respect to a particular school, the State would be required to review the performance of the LEA during the planning year against the LEA's approved application and determine that the LEA will be able to ensure that the school fully implements the activities and interventions that will be supported with school improvement funds by the beginning of the next school year before renewing the school improvement award.

#### State Responsibilities

The proposed regulations would require that each State—

- Establish the method to allocate school improvement funds;
- Monitor the use of school improvement funds;
- Evaluate the use of school improvement funds including by, at a minimum, engaging in ongoing efforts to examine the effects of the evidence-based interventions implemented using school improvement funds on student outcomes and other relevant outcomes and disseminate its findings to LEAs with schools required to implement evidence-based interventions;
- Determine that the school is making progress on the indicators in the statewide accountability system in proposed § 200.14 prior to renewing an LEA's award of school improvement funds with respect to a particular school is implementing evidence-based interventions with fidelity to the requirements in proposed §§ 200.21 and 200.22 in the LEA's application; and
- Reduce barriers and provide operational flexibility for schools in LEAs receiving school improvement funds, including with respect to school budgeting and staffing, as appropriate.

Further, the proposed regulations would clarify that a State may set aside up to five percent of its school improvement fund reservation under section 1003(a) of the ESEA, as amended by the ESSA, to carry out these five activities.

Finally, the proposed regulations would clarify that a State may directly provide for school improvement activities or arrange for their provision through an external partner, such as school support teams, educational service agencies, or nonprofit or for-profit entities. An external partner would be required to have expertise in using evidence-based strategies to improve student achievement, instruction, and schools, and the proposed regulations would require that, with respect to each school, either the State has the authority to take over the school consistent with State law or the LEA approves the arrangement. If the State arranges for the provision of services through an external partner, the regulations would require that the State undertake a rigorous review process in recruiting, screening, selecting, and evaluating an external partner the State uses to carry out the activities and the external partner have a demonstrated success implementing the evidence-based interventions that it will implement.

## Reporting

The proposed regulations would require that each State include in its State report card a list of all the LEAs and schools receiving school improvement funds, including the amount of funds each LEA receives to serve each school and the type of intervention or interventions being implemented in each school with school improvement funds.

*Reasons:* The proposed regulations would clarify State and LEA responsibilities to ensure that the schools in need of the most support receive funds under section 1003 of the ESEA, as amended by the ESSA, and use such funds appropriately and effectively to improve student outcomes and school success. We propose to update the current regulations to address the increased State reservation of funds required by the statute and explain how these funds must be used to reinforce the statutory requirements for supporting school improvement in schools identified under section 1111(d).

## LEA Eligibility

Proposed § 200.24 would clarify that States should prioritize funding to serve schools identified for comprehensive support and improvement. Schools in comprehensive support and improvement have been identified due to systemic low performance or graduation rates for all students, or chronically low-performing subgroups of students. We recognize that, given limited resources, pervasive, schoolwide challenges in student performance and outcomes should be addressed with improvement funds prior to addressing challenges in schools that are localized or smaller in scope.

## LEA Application

Proposed § 200.24 would clarify the statutory components of each LEA's application for funds under section 1003 from the State, with a particular emphasis on how the application requirements align with the expectations of LEAs to support schools identified for comprehensive or targeted support and improvement under section 1111(d), in implementing evidence-based interventions. Proposed § 200.24 would specify that one or more school interventions funded under section 1003 must meet a higher level of evidence (*i.e.*, strong, moderate, or promising levels of evidence), even though other interventions that can be included in support and improvement plans under section 1111(d) could meet

a lower evidence level. Similarly, the proposed regulations would clarify how the planning year that is permitted for a school in comprehensive or targeted support and improvement under proposed §§ 200.21 and 200.22 is distinct from a planning year for use of section 1003 funds to ensure that receipt of school improvement funding does not delay full implementation of a support and improvement plan under section 1111(d).

In addition, the proposed regulations would clarify the minimum requirements an LEA must address in its application to the State to receive funds under section 1003 to ensure effective local implementation of comprehensive support and improvement plans and targeted support and improvement plans for schools in LEAs that receive school improvement funds. For example, in addition to describing the LEA's plan to monitor each school for which the LEA receives school improvement funds, the LEA would also be required to include its plan to increase monitoring of schools that do not meet the exit criteria. This would help ensure that schools identified for comprehensive or targeted support and improvement do not linger in such a status for multiple years without increased attention from the LEA, and reinforce the goals of the statewide accountability system. An LEA would also describe how it will plan for school improvement activities to be sustained in schools once funding is completed, in addition to describing how it will align Federal, State, and local resources.

## State Allocation of Funds

To ensure funding for school improvement has a meaningful impact, particularly for schools that are the lowest-performing in the State and require comprehensive support and improvement and whole-school reform, the proposed regulations would require States to allocate grants of sufficient size so that each school identified for comprehensive support and improvement would receive at least \$500,000 per year and each school identified for targeted support and improvement would receive at least \$50,000 per year, unless the LEA provides a justification to the State that a lesser amount would be sufficient. The minimum award amount of \$500,000 for a school identified for comprehensive support and improvement would help ensure that it has the resources it needs to implement the comprehensive interventions that will lead to sustained school improvements. The amount is based on data about the size of awards under the School Improvement Grants

program, under which low-performing schools implemented whole-school comprehensive reform models aimed at turning around the schools' performance.<sup>16</sup> The minimum award amount of \$50,000 for a school identified for targeted support and improvement would ensure that school improvement resources are not spread so thinly across LEAs in the State that funds for an individual school are inadequate to support high-quality, faithful implementation of an evidence-based intervention that will improve student and school outcomes and assist the school in exiting improvement status.

The proposed regulations would also emphasize that, in determining the greatest need for funds if insufficient funds are available to award a grant of sufficient size to all LEAs, States must examine the number and percentage of schools identified in the LEA for comprehensive or targeted support and improvement, the resource inequities the State has identified under proposed § 200.23, and academic achievement and student outcomes in the identified schools. Similarly, in determining the strongest commitment, a State must examine the proposed use of evidence-based interventions, and the LEA's commitment to family and community engagement. The purpose of these proposed regulations is to increase the likelihood that funds are awarded to LEAs that will successfully implement interventions in schools identified for comprehensive or targeted support and improvement. Specifically, the use of more rigorous evidence-based interventions and strong support from the local community are likely to increase a school's chances of significantly improving student achievement and outcomes.

## State Responsibilities

Proposed § 200.24 would clarify the statutory requirements for States to support LEAs in using funds under section 1003, and help align these responsibilities with the expectations on the State to support schools identified for comprehensive or targeted support and improvement under section 1111(d). For example, States would be required to evaluate the use of funds under section 1003 including by examining the effects of evidence-based interventions on student achievement and outcomes in schools supported by 1003 funds and disseminating those

<sup>16</sup> See Hulburt, S., Theriault, S.B., Le Floch, K.C., and Wei, T. (2012). "School improvement grants: Analyses of state applications and eligible and awarded schools." U.S. Department of Education, Institute of Education Sciences, pp. 29–34.

results to LEAs. This activity would reinforce the technical assistance States would be providing to LEAs under proposed § 200.23, which will be critical to guide LEAs' and schools' implementation of the new evidence requirements in the statute and to help build stronger evidence of effective interventions. By specifying the minimum requirements a State must meet, States will be better equipped to support effective implementation of comprehensive support and improvement plans and targeted support and improvement plans for schools in LEAs that receive funds under section 1003.

*Section 200.30 Annual State Report Card*

*Statute:* Section 1111(h)(1)(A) of the ESEA, as amended by the ESSA, requires a State that receives assistance under title I, part A to disseminate widely to the public an annual State report card for the State as a whole. Section 1111(h)(1)(B) of the ESEA, as amended by the ESSA, further requires the State report card to be: Concise; presented in an understandable and uniform format that is developed in consultation with parents; presented to the extent practicable in a language that parents can understand; and widely accessible to the public.

In addition, section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, establishes minimum requirements for the content of State report cards, including requirements for a State to include disaggregated information for certain data elements by subgroup. Included among the subgroups for which disaggregation is required for some data elements are migrant status, homeless status, status as a child in foster care, and status as a student with a parent who is a member of the Armed Forces on active duty.

Finally, section 1111(i) of the ESEA, as amended by the ESSA, provides that disaggregation of data for State report cards shall not be required if such disaggregation will reveal personally identifiable information about any student, teacher, principal, or other school leader, or will provide data that are insufficient to yield statistically reliable information.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 200.30 would require a State to prepare and disseminate widely to the public an annual State report card that includes information on the State as a whole and is concise and presented in an understandable and uniform format and in a manner accessible to the

public, including the parents of students in the State.

Proposed § 200.30(a) restates statutory requirements that a State that receives title I, part A funds must prepare and disseminate widely to the public an annual State report card, which must include, at a minimum the information required under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA. It also requires that State report cards include, for each authorized public chartering agency in the State, demographic and academic achievement data for each school authorized by such agency compared to the community in which the charter school is located.

Proposed § 200.30(b) restates the statutory requirement that a State report card be concise and presented in an understandable and uniform format that is developed in consultation with parents. It also would clarify that to meet these requirements, a State, in addition to meeting all minimum requirements under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, must develop with parental input a report card format that begins with a clearly labeled overview section that is prominently displayed. Under proposed § 200.30(b), the overview section of a State report card would include statewide results for all students and, at a minimum, each subgroup of students described in proposed § 200.16(a)(2) on the following: The State's academic assessments in each of reading/language arts, mathematics, and science; each measure within the Academic Progress indicator for public elementary schools and secondary schools that are not high schools; the four-year adjusted cohort graduation rate, and each measure within each indicator of School Quality or Student Success. In addition, the overview section would include the number and percentage of English learners achieving English language proficiency on the State's English language proficiency assessment.

Proposed § 200.30(c) would also require that each State report card be in a format and language, to the extent practicable, that parents can understand consistent with proposed § 200.21(b)(1)–(3).

Proposed § 200.30(d) would restate the statutory requirements for a State to disseminate widely to the public the State report card, which at a minimum must be made available on a single page of the SEA's Web site, and to include on the SEA's Web site the report card for each LEA in the State required under proposed § 200.31 as well as the annual report to the Secretary required under

section 1111(h)(5) of the ESEA, as amended by the ESSA.

Proposed § 200.30(e) would require the dissemination of the State report cards no later than December 31 each year, beginning with report cards based on information from the 2017–2018 school year. If a State is unable to meet this deadline for the 2017–2018 school year for some or all of the newly required information under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, proposed § 200.30(e) would allow the State to request from the Secretary a one-time, one-year extension for reporting on such required elements of the report cards. A State would be required to submit an extension request to the Secretary by July 1, 2018, and include evidence demonstrating that the State cannot meet the deadline, as well as a plan and timeline for how the State would publish the newly required information by December 31, 2019.

Finally, proposed § 200.30(f) would define certain terms related to the subgroups for which disaggregated data must be reported under section 1111(h) of the ESEA, as amended by the ESSA. It would clarify the meaning of the terms “migrant status,” “homeless status,” “child in foster care status,” and “student with a parent who is a member of the armed forces on active duty” by reference to established statutory and regulatory definitions. Proposed § 200.30(e) would also clarify that, consistent with proposed § 200.17, disaggregation on State and LEA report cards is not required if the number of students in the subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about a student.

*Reasons:* State report cards were conceived under the ESEA, as amended by the NCLB, as a mechanism to increase the availability of school accountability data for parents and the public, enabling them to reward and hold accountable public officials, State and local administrators, and educators for the performance of their public schools. Built on decades of education performance reporting that started with the Nation's Report Card in 1969, school performance reporting requirements under the ESEA, as amended by the NCLB, significantly expanded the depth and breadth of accountability data available to parents and the public. These audiences had to make meaning out of the data provided on report cards, which were often lengthy and complex despite requirements that they be concise and understandable.

With respect to State report cards, section 1111(h)(1) of the ESEA, as

amended by the ESSA, maintains the requirement that report cards be concise and understandable. At the same time, however, report cards must include valuable new data elements, which could make report cards longer and more complex, and if confusing, potentially not as useful to stakeholders. As a result, we are proposing § 200.30 to clarify what States must do to meet these seemingly conflicting requirements. In addition, we are requiring that State report cards provide information for each authorized public chartering agency in the State in order to provide transparency regarding the demographic composition and academic achievement of charters schools authorized by such agency as compared to the broader community in which the schools are located.

Proposed § 200.30 would require States to develop a format and process to share report cards with parents, as well as the public in a manner that is concise, accessible, informative, timely, and understandable. The proposed regulations would specify that States design and disseminate an overview section that would be prominently displayed on annual report cards. These requirements would help parents and the public more effectively access and use State-level data.

The proposed regulations would also encourage States to creatively design and publish report cards that are truly concise while not abandoning minimum report card requirements related to transparent and accurate presentation of a broad range of data. These requirements would maintain a commitment to the civil rights legacy of the ESEA by ensuring that objective, disaggregated evidence of student academic achievement, graduation rates, other academic indicators, and indicators of school quality or success are visible to the public in a format that clearly conveys where gaps exist between subgroups of students.

Proposed § 200.30(c)–(d) is also intended to provide clarity to States related to statutory reporting requirements that call for report cards to be widely accessible, including on the SEA's Web site. To clarify this statutory requirement, proposed § 200.30(c) would require that report cards be provided in a format and language, to the extent practicable, that parents can understand, increasing the access and availability to all members of the public, regardless of language barrier or disability.

Proposed § 200.30(e) would also require States to make report cards publicly available no later than December 31 each year. This would

create a more well-informed public that is better prepared to work with educators and local school officials during the school year to effectively address and close achievement, opportunity, and equity gaps in a timely manner.

To ensure States and LEAs disaggregate student data on report cards so that it is accurate and comparable across and within States and LEAs, proposed § 200.30(f) would define the terms used to identify certain subgroups for which disaggregated data must be provided under applicable reporting requirements in section 1111(h)(1)(C) of the ESEA, as amended by the ESSA. Specifically, proposed § 200.30(f) would clarify the meaning of the terms “migrant status,” “homeless status,” “child in foster care status,” and “student with a parent who is a member of the Armed Forces on active duty” by reference to established statutory and regulatory definitions. In addition to clarifying these definitions, proposed § 200.30 would also correct a technical error under section 1111(h)(1)(C)(ii) of the ESEA, as amended by the ESSA, which defines “active duty” by reference to 10 U.S.C. 101(d)(5). Section 101(d)(5) of title 10 of the United States Code defines “full-time National Guard duty,” not “active duty.” “Active duty” is defined under 10 U.S.C. 101(d)(1) to mean full-time duty in the active military service of the United States, including “full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.” Finally, to ensure States and LEAs report disaggregated data that is reliable and protects student privacy, proposed § 200.30 would also reinforce statutory requirements under section 1111(i) of the ESEA, as amended by the ESSA, and proposed § 200.17, which require that disaggregated data only be shared when information is statistically reliable and in a format that protects the identity of individual students.

The Department will pursue options to help ensure the transparency, accessibility, and utility of State report cards, which may include providing links to State report cards on our Web site.

#### *Section 200.31 Annual LEA Report Card*

*Statute:* Section 1111(h)(2)(A) of the ESEA, as amended by the ESSA, requires an LEA that receives assistance under title I, part A to prepare and

disseminate an annual LEA report card that includes information on the LEA as a whole and each school served by the LEA. Section 1111(h)(2)(B) of the ESEA, as amended by the ESSA, further requires that each LEA report card be: Concise; presented in an understandable and uniform format; presented to the extent practicable in a language that parents can understand; and accessible to the public. Further, LEA report cards must be available on the LEA's Web site, if the LEA operates a Web site. If the LEA does not operate a Web site, the LEA must make the report card available to the public in another manner determined by the LEA.

In addition, sections 1111(h)(1)(C) and 1111(h)(2)(C) establish minimum requirements for the content of LEA report cards, including requirements for an LEA to include disaggregated information for certain data elements by subgroup. Included among the subgroups for which disaggregation is required for some data elements are migrant status, homeless status, status as a child in foster care, and status as a student with a parent who is a member of the Armed Forces on active duty.

Finally, section 1111(i) of the ESEA, as amended by the ESSA, provides that disaggregation of data for LEA report cards shall not be required if such disaggregation will reveal personally identifiable information about any student, teacher, principal, or other school leader, or will provide data that are insufficient to yield statistically reliable information.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 200.31 would require an LEA to prepare and disseminate to the public an annual LEA report card that includes information on the LEA as a whole and each school served by the LEA and that is concise and presented in an understandable and uniform format and in a manner accessible to the public, including parents of students in the LEA.

Proposed § 200.31(a) restates statutory requirements that an LEA that receives title I, part A funds must prepare and disseminate to the public an annual LEA report card, which must include, at a minimum, the information required under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, for the LEA as a whole and each school served by the LEA.

Proposed § 200.31(b) restates the statutory requirement that an LEA report card be concise and presented in an understandable and uniform format. Proposed § 200.31(b) would clarify that, to meet these requirements, an LEA, in

addition to meeting all minimum requirements under section 1111(h)(2)(C) of the ESEA, as amended by the ESSA, must develop a report card format in consultation with parents, that begins with, for the LEA as a whole and for each school served by the LEA, a clearly labeled overview section that is prominently displayed and that, for each school served by the LEA, can be distributed to parents on a single piece of paper. Proposed § 200.31(b) would require that the overview section include, at a minimum, for the LEA as a whole and for each school served by the LEA, the same information as is required on State report cards under proposed § 200.30(b)(2), for all students and each subgroup of students described in proposed § 200.16(a)(2). In addition, proposed § 200.31(b) would require the overview section for the LEA as a whole to include information on the achievement on the State's academic assessments in reading/language arts, mathematics, and science of students served by the LEA compared to students in the State as a whole, and the overview section for each school to include corresponding information for the school's students compared to students served by the LEA and the State as a whole. The overview section would also be required to include, for each school, information on school-level accountability results, including, as applicable, identification for comprehensive or targeted support and improvement described in proposed §§ 200.18 and 200.19 and, for the LEA and for each school, basic LEA or school identifying information (e.g., name, address, phone number, and status as a participating Title I school).

Proposed § 200.31(c) would also require that each LEA report card be in a format and language, to the extent practicable, that parents can understand consistent with proposed § 200.21(b)(1)–(3).

Proposed § 200.31(d) would restate the statutory requirements for an LEA report card to be made available on the LEA's Web site, except that an LEA that does not operate a Web site may provide the information to the public in another manner determined by the LEA. Proposed § 200.31(d) would further require that the LEA provide the information required for the overview section under proposed § 200.31(b)(2) to parents of each student enrolled in each school in the LEA directly though such means as regular mail or email and in a timely manner consistent with § 200.31(e).

Proposed § 200.31(e) would require the dissemination of LEA report cards on the same timeline as State report

cards under proposed § 200.30(e). If an LEA is unable to meet this deadline for some or all of the newly required information under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, proposed § 200.31(e) would allow the State to request from the Secretary, on behalf of the LEA, a one-time, one-year extension for reporting on such required elements consistent with the requirements for State report card extensions under § 200.31(e)(2). Additionally, proposed § 200.31(f) would incorporate by reference the requirements regarding disaggregation of data under proposed § 200.30(f).

*Reasons:* For the same reasons as the parallel requirements for annual State report cards under proposed § 200.30, proposed § 200.31 would require LEAs to develop a format and process for developing and disseminating LEA report cards in a manner that is concise, accessible, informative, timely, and understandable. With respect to LEA report cards in particular, there is evidence that when school quality information, including information about school accountability results, is provided to parents, they pay attention and respond. This suggests that concise presentation of school quality data would increase the likelihood that more parents are knowledgeable about the academic achievement of their children and the students in their community, and the performance of their child's school, including the relative standing of the school compared to LEA-wide and statewide performance.<sup>17</sup>

<sup>17</sup> Black, S.E. (1999). "Do better schools matter? Parental valuation of elementary education." *Quarterly Journal of Economics*, 114 (2): 577–99.

Charbonneau, E., & Van Ryzin, G.G. (2012). "Performance measures and parental satisfaction with New York City Schools." *American Review of Public Administration*, 42 (1): 54–65.

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Jacobsen, R., Saultz, A. & Snyder, J.W. (2013). "When accountability strategies collide: Do policy changes that raise accountability standards also erode public satisfaction?" *Educational Policy*, 27 (2): 360–89.

Koning, P. & Wiel, K.V.D. (2013). "Ranking the Schools: How school-quality information affects school choice in the Netherlands." *Journal of the European Economic Association*, 11 (2): 466–493.

Nunes, L.C., Reis, A.B., & Seabra, C. (2015). "The publication of school rankings: A step toward increased accountability?" *Economics of Education Review*, 49 (December): 15–23.

Recognizing the importance of LEA and school information to parents, proposed § 200.31(d) includes an additional requirement, not included in the State report card requirements under proposed § 200.30, that would require an LEA to provide the information required for the overview section under proposed § 200.31(b)(2) to parents of each student enrolled a school served by the LEA directly though such means as regular mail or email and in a timely manner consistent with proposed § 200.31(e). This proposed requirement is necessary to ensure that key information about LEA and school performance reaches parents on a timeline such that they have relevant information to work effectively with educators and local school officials during the school year.

#### *Section 200.32 Description and Results of a State's Accountability System*

*Statute:* Section 1111(h)(1)(C)(i) and section 1111(h)(2)(C) of the ESEA, as amended by the ESSA, require State and LEA report cards to include a description of the State's accountability system under section 1111(c) of the ESEA, as amended by the ESSA, including:

- The minimum number of students that the State determines are necessary to be included in each of the subgroups of students, as defined in section 1111(c)(2), for use in the accountability system;
- The long-term goals and measurements of interim progress for all students and for each of the subgroups of students, as defined in section 1111(c)(2);
- The indicators described in section 1111(c)(4)(B) used to meaningfully differentiate all public schools in the State;
- The State's system for meaningfully differentiating all public schools in the State, including: The specific weight of the indicators described in section 1111(c)(4)(B) in such differentiation; the methodology by which the State differentiates all such schools; the methodology by which the State identifies a school as consistently underperforming for any subgroup of students described in section 1111(c)(4)(C)(iii), including the time period used by the State to determine consistent underperformance; and the methodology by which the State identifies a school for comprehensive

Rockoff, J.E. & Turner, L.J. (2008). *Short run impacts of accountability on school quality*. Working Paper 14564, National Bureau of Economic Research, <http://www.nber.org/papers/w14564>.

support and improvement as required under section 1111(c)(4)(D)(i);

- The number and names of all public schools in the State identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) or implementing targeted support and improvement plans under section 1111(d)(2); and
- The exit criteria established by the State as required under section 1111(d)(3)(A)(i) for schools in comprehensive support and improvement and for schools requiring additional targeted support, including the number of years by which a school requiring additional targeted support must meet the exit criteria as established under section 1111(d)(3)(A)(i)(II).

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 200.32(a) would restate the statutory requirements in section 1111(h)(1)(C)(i) of the ESEA, as amended by the ESSA, for describing the State's current accountability system on State report cards and clarify that the description must include:

- The minimum number of students under proposed § 200.17;
- The long-term goals and measurements of interim progress under proposed § 200.13;
- The indicators under proposed § 200.14 and the State's uniform procedure for averaging data across years or combining data across grades under proposed § 200.20, if applicable;
- The system of annual meaningful differentiation under proposed § 200.18, including the weight of each indicator, how participation rates factor into such differentiation consistent with proposed § 200.15, and the methodology to differentiate among schools using performance levels and summative ratings;
- The methodology used to identify schools with one or more consistently underperforming subgroups for targeted support and improvement consistent with proposed § 200.19(c);
- The methodology used to identify schools for comprehensive support and improvement consistent with proposed § 200.19(a); and
- The exit criteria established by the State under §§ 200.21(f) and 200.22(f) for schools in comprehensive support and improvement and for schools in targeted support and improvement with low-performing subgroups consistent with proposed § 200.19(b)(2), including the number of years by which schools must meet the applicable exit criteria.

Further, proposed § 200.32(b) would clarify that, to the extent that a description of the required

accountability system elements is provided in the State plan or in another location on the SEA's Web site, a State or LEA may provide the Web address or URL of, or direct link to, the State plan or other location on the SEA's Web site to meet the reporting requirements for these accountability system elements. The Web site content referred to in such a Web address or link must be in a format and language that parents can understand, in compliance with the requirements under § 200.21(b)(1)–(3).

Proposed § 200.32(c) would also require LEA report cards to include, for each school served by the LEA, the performance level described in proposed § 200.18(b)(3) on each indicator under proposed § 200.14, as well as the school's single summative rating described in proposed § 200.18(b)(4). In reporting each school's performance level on each of the accountability system indicators, an LEA would be required to include, if the State accountability system includes more than one measure within any indicator, results on all such measures individually in addition to the performance level for each indicator (which takes into account the school's results on all of the measures within the indicator).

Proposed § 200.32(c) would also require State and LEA report cards to include the reason for which the State identified a school for comprehensive support and improvement under proposed § 200.19(a) (*i.e.*, lowest-performing school, low graduation rates, chronically low-performing subgroups). In the case that a school is identified for comprehensive support with one of more chronically low-performing subgroups of students under proposed § 200.19(a)(3), State and LEA report cards would be required to include the name of the subgroup or subgroups of students that led to such identification. State and LEA report cards would also be required to indicate, for each school identified for targeted support and improvement under proposed § 200.19(b), the reason for such identification (*i.e.*, consistently underperforming subgroups or low-performing subgroups) and the subgroup or subgroups of students that led to such identification.

*Reasons:* Proposed § 200.32 is intended to ensure that parents, teachers, principals, and other key stakeholders have access to complete and transparent information about school performance and progress on the State's accountability system. Under the ESEA, as amended by the ESSA, States have the opportunity to develop and implement accountability systems that

take into account multiple indicators of school performance and progress, weighting these indicators as they choose, within certain guidelines set by the statute, in order to annually differentiate among all schools and identify certain schools for comprehensive or targeted support and improvement. While this allows for States to develop and implement accountability systems that reflect their unique State contexts and beliefs about how to hold schools accountable for improving student achievement and closing gaps, it also necessitates that States and LEAs inform parents, teachers, principals, and other key stakeholders about the key components of the accountability system and how they work together—and the results of such system for each school—to help ensure they can understand and meaningfully contribute to school improvement efforts.

The statute requires each State and LEA report card to describe certain elements of the accountability system, and proposed § 200.32(a) clarifies these elements in order to ensure they reflect the proposed regulations in §§ 200.13 through 200.24 and provide the public with a complete picture of how each required element works together in a coherent system of accountability, including the State's: Minimum n-size; long-term goals and measurements of interim progress; indicators and procedures for averaging data across years or grades; system for annual meaningful differentiation, including the weighting of each indicator and role of participation rates; methodology to identify schools for comprehensive or targeted support and improvement; and exit criteria for identified schools.

Proposed § 200.32(b) also would permit the State or LEA report card to link to the State plan or another location on the SEA's Web site for certain elements of the accountability system description. The Department recognizes that repeating this information on the report card may be burdensome and may also undermine the design of a concise report card. We also recognize that a detailed description of some of the accountability system elements may not add significantly to parents' or other stakeholders' understanding. For these reasons, we believe it is appropriate to allow the State or LEA to provide a Web address for, or direct link to, the State plan or another location on the SEA's Web site for detailed information on the accountability system description required under 1111(h)(1)(C)(i) (*e.g.*, the minimum number of students under proposed § 200.17). We encourage States in developing report cards to consider

the amount of information needed to help parents and other stakeholders engage in and understand the State accountability system. For example, States may wish to indicate the minimum subgroup size on the report card because such information likely facilitates understanding of how school performance is measured, and then provide more detailed information on how the minimum subgroup size was determined in the State plan or another location on the SEA's Web site.

In addition to a description of the accountability system, proposed § 200.32(c) would require school-level accountability results to also be included on report cards. Because of the potential complexity of multi-indicator State accountability systems under the ESEA, as amended by the ESSA, information on a school's performance level on each of the individual indicators is critical for parents and stakeholders to understand school performance across multiple dimensions of success and the relationship of the performance on each indicator to how a school is ultimately identified in the State's accountability system. Further, knowing a school's single summative rating will be important for conveying a school's performance overall, in a way that reflects performance across the individual indicators. For these reasons, proposed § 200.32(c) would require each LEA report card to include each school's performance level on every indicator, as well as the summative rating.

In addition to reporting on the performance levels, proposed § 200.32(c) would require that State and LEA report cards include, along with the number and names of all schools identified for comprehensive or targeted support and improvement as required by statute, the particular reason for such identification, including, as applicable, any subgroup of students whose performance contributed to such identification. This information would help parents and the public better understand the quality of public schools in their communities and bolster the efforts of schools, districts, and States to target support, resources, and technical assistance to address specific needs of students and schools.

#### *Section 200.33 Calculations for Reporting on Student Achievement and Meeting Measurements of Interim Progress*

**Statute:** Section 1111(h)(1)(C)(ii) of the ESEA, as amended by the ESSA, requires State and LEA report cards to include information on student achievement on the academic

assessments in reading/language arts, mathematics, and science described in section 1111(b)(2) at each level of achievement (as determined by the State under section 1111(b)(1)) for all students and disaggregated by each subgroup of students described in section 1111(b)(2)(B)(xi), homeless status, status as child in foster care, and status as a student with a parent who is a member of the Armed Forces (as defined in 10 U.S.C. 101(a)(4)) on active duty (as defined in 10 U.S.C. 101(d)(5)). Further, section 1111(h)(2)(C) of the ESEA, as amended by the ESSA, requires LEA report cards to include, for the LEA as a whole, information that shows the achievement on the academic assessments described in section 1111(b)(2) of students served by the LEA compared to students in the State as a whole and, for each school served by the LEA, corresponding information for the school's students compared to students served by the LEA and the State as a whole. Section 1111(h)(1)(C)(vi) of the ESEA, as amended by the ESSA, requires State and LEA report cards to include information on the progress of all students and each subgroup of students, as defined in section 1111(c)(2), toward meeting the State-designed long-term goals for academic achievement in reading/language arts and mathematics under section 1111(c)(4)(A), including the progress of all students and each subgroup of students against the State's measurements of interim progress established under such section. Section 1111(h)(1)(C)(vii) of the ESEA, as amended by the ESSA, requires State and LEA report cards to include, for all students and disaggregated by each subgroup of students described in section 1111(b)(2)(B)(xi), the percentage of students assessed and not assessed.

**Current Regulations:** None.

**Proposed Regulations:** Proposed § 200.33(a) would require State and LEA report cards to include the percentages of students performing at each level of achievement on the State's academic achievement standards, by grade, for all students and disaggregated for each subgroup of students, on the reading/language arts, mathematics, and science assessments described in section 1111(b)(2), using the following two calculation methods: (1) The method used in the State accountability system, as described in proposed § 200.15(b)(1), in which the denominator includes the greater of—

- 95 percent of all students and 95 percent of each subgroup of students who are enrolled in the school, LEA, or State, respectively; or

- the number of such students participating in these assessments; and (2) a method in which the denominator includes all students with a valid test score. Proposed § 200.33(b) would also clarify the calculation method used for the statutory requirement that State and LEA report cards include an indication of whether all students and each subgroup of students described in proposed § 200.16(a)(2) met or did not meet the State's measurements of interim progress for academic achievement under proposed § 200.13(a). Under proposed § 200.33(b), the determination of whether all students and each subgroup of students met or did not meet these State measurements of interim progress (based on the percentage of students meeting or exceeding the State's proficient level of achievement) would be calculated using the method in proposed § 200.15(b)(1), in which the denominator includes the greater of—

- 95 percent of all students and 95 percent of each subgroup of students who are enrolled in the school, LEA, or State, respectively; or

- the number of all such students participating in these assessments.

Finally, proposed § 200.33(c) would clarify that, to meet the requirements under section 1111(h)(1)(C)(vii), State and LEA report cards would include information on the percentage of all students and each subgroup of students assessed and not assessed in reading/language arts, mathematics, and science based on a calculation method in which the denominator includes all students enrolled in the school, LEA, or State, respectively.

**Reasons:** Proposed § 200.33(a) is intended to ensure that parents, teachers, principals, and other key stakeholders have access to information about student academic achievement in schools, LEAs, and the State as a whole based on two calculation methods: (1) One consistent with the method of calculating student academic achievement for accountability purposes; and (2) one that reflects student achievement based only on students with a valid test score. Together, these two different methods would provide a more nuanced picture of school, LEA, and State performance on the assessments required under the ESEA, as amended by the ESSA. In addition, these two different methods would ensure consistency between information that is publicly reported on State and LEA report cards and information that is considered by the State in making school accountability



determinations. Similarly, proposed § 200.33(b) would require the same method for determining whether or not all students and each student subgroup met or did not meet the State's measurements of interim progress for academic achievement as is used for measuring performance on the Academic Achievement indicator for accountability purposes (see proposed § 200.15(b)(1)), which will help create stronger alignment between the measurements of interim progress and long-term goals and the indicators that are based on those goals. Finally, in order for parents and the public to fully understand the numerous pieces of information on academic achievement reported on State and LEA report cards, the percentage of students assessed and not assessed must be clear. With accurate information on the percentage of students assessed in the school, LEA, and State as a whole, for all students and each subgroup of students, the public will be more likely to draw appropriate conclusions about the performance of schools, LEAs, and the State. Thus, proposed § 200.33(c) ensures such accuracy.

#### *§ 200.34 High School Graduation Rate*

*Statute:* Section 1111(h)(1)(C)(iii)(II) of the ESEA, as amended by the ESSA, requires a State and its LEAs to report four-year adjusted cohort graduation rates and, at the State's discretion, extended-year adjusted cohort graduation rates on State and LEA report cards. The adjusted cohort graduation rates must be reported in the aggregate for all students and disaggregated by subgroup at the school, LEA, and State levels.

Section 8101(23) and (25) of the ESEA, as amended by the ESSA, requires the State to use a specific definition and process for the calculation of the adjusted cohort graduation rate. This section specifies that the denominator must consist of students who form the original grade 9 cohort, adjusted by adding students into the cohort who join later and subtracting students who leave the cohort. The section further specifies that the numerator must consist of (1) students who earn a regular high school diploma within four years (or one or more additional years for any extended-year cohort), and (2) students with the most significant cognitive disabilities who are assessed using the alternate assessment aligned to alternate academic achievement standards and earn an alternate diploma defined by the State. This section specifies that the alternate diploma must be standards-based, aligned with State requirements

for the regular high school diploma, and obtained within the time period for which the State ensures the availability of a free appropriate public education (FAPE) under section 612(a)(1) of the IDEA.

Section 8101(23) and (25) requires that the State obtain documentation to remove a student from the cohort, and specifies that a student can be removed from the cohort only if the student transfers out, emigrates to another country, transfers to a juvenile justice facility or prison, or is deceased. Further, this section requires that a student can be transferred out only if the student transfers to another school from which the student is expected to receive a regular high school diploma or to another educational program from which the student is expected to receive a regular high school diploma or alternate diploma that meets the statutory requirements. If there is no documentation for a student transferring out of the cohort, or if the student participates in a program that does not issue or provide credit toward diploma types that meet the requirements of this section, such a student must remain in the cohort.

Section 8101(23) and (25) outlines special rules for high schools starting after grade 9. It also includes special rules for small schools, which apply to section 1111(c)(4) and are not applicable to report card requirements under section 1111(h).

Finally, section 1111(c)(4)(F) of the ESEA, as amended by the ESSA, describes how States and LEAs must include students in the adjusted cohort graduation rate cohort if they have attended a school for less than half of the academic year and leave the school without earning a regular high school diploma, or alternate diploma for students with the most significant cognitive disabilities, and without transferring to a high school that grants such a diploma. The section allows the State to decide whether to include such a student in the adjusted cohort for the school where the student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12, or the school in which the student was most recently enrolled.

*Current Regulations:* Section 200.19(b)(1) of the title I regulations describes how to calculate an adjusted cohort graduation rate. This section defines the phrase "adjusted cohort" and describes the conditions under which students may be transferred into and out of the cohort, including how transfers must be documented and who cannot be removed from the cohort. It also defines "students graduating in

four years" and "regular high school diploma." In addition, § 200.19(b)(1) allows States to propose to the Secretary one or more extended-year graduation rates.

Section 200.19(b)(2) allows States to use a transitional graduation rate prior to implementation of the adjusted cohort graduation rate. When calculating the transitional graduation rate, § 200.19 requires States to define "regular high school diploma" and "standard number of years" in the same manner they are defined for the purpose of calculating an adjusted cohort graduation rate, and does not allow dropouts to be included as transfers. Section 200.19(b)(3) requires States to set a single graduation rate goal and annual targets for all students and for each subgroup of students that reflect continuous and substantial improvement toward meeting or exceeding the goal. It further requires States to meet or exceed the graduation rate goal or target in order to meet AYP.

Section 200.19(b)(4) requires a State and its LEAs to report the four-year adjusted cohort graduation rate on annual report cards at the school, LEA, and State levels, in the aggregate and disaggregated by each subgroup of students. It also requires a State and its LEAs to report separately an extended-year graduation rate, if the State has adopted such a rate, beginning with the first year that the State calculates such a rate. Prior to the year in which the State implements the adjusted cohort graduation rate, this section requires the State to use its transitional rate.

Section 200.19(b)(5) describes the timelines for using the adjusted cohort graduation rate for AYP determinations, and the requirements for including graduation rates in making AYP determinations prior to the use of the adjusted cohort graduation rate. Section 200.19(b)(6) requires the State to update its Accountability Workbook with:

- Information about the State's transitional graduation rate and plan to transition to the adjusted cohort graduation rate;
- The State's goals and targets and the rationale for how they were established;
- Percentiles of its most recent graduation rates; and
- An explanation of how the State chooses to use its extended-year graduation rate (if applicable).

Section 200.19(b)(7) allows the State to request an extension from the Secretary if it cannot meet the requirements of the section and can submit satisfactory evidence demonstrating why it cannot meet the requirements.

*Proposed Regulations:* Proposed § 200.34 would revise and replace current regulations to align the regulations with the statutory requirements in sections 8101(23) and (25) and would clarify statutory requirements in section 1111(c)(4)(F) of the ESEA, as amended by the ESSA. In addition, proposed § 200.34(a) would clarify that, for high schools that start after grade 9, States must calculate and report a four-year adjusted cohort graduation rate based on a time period shorter than four years. Proposed § 200.34(b) would provide greater specificity as to when States can adjust the cohort by requiring that States remove students who transfer to a prison or juvenile facility from the denominator of the cohort only if such facility provides an educational program that culminates in a regular high school diploma or State-defined alternate diploma. Proposed § 200.34(c) would clarify that the term “regular high school diploma” does not include diplomas based solely on meeting individualized education program (IEP) goals that are not fully aligned with the State’s grade-level academic content standards. Additionally, it would clarify that the definition of a student with significant cognitive disabilities is the same as defined in the proposed requirement in § 200.6(d)(1) that was subject to negotiated rulemaking under the ESSA and on which the negotiated rulemaking committee reached consensus. Additionally, proposed § 200.34(d) would limit the length of an extended-year adjusted cohort graduation rate to seven years. Proposed § 200.34(e) would require States to report four-year adjusted cohort graduation rates and, if adopted by the State, extended year graduation rates on time (*i.e.*, States would be prohibited from delaying the reporting of adjusted cohort graduation rates beyond the immediately following school year). It would further specify that States that offer State-defined alternative diplomas for students with the most significant cognitive disabilities within the time period that the State ensures the availability of a FAPE cannot delay reporting of the four-year adjusted cohort graduation rate and, if adopted by the State, extended year graduation rates. Instead, a State would be required to report on-time adjusted cohort graduation rates, and then annually update their adjusted cohort graduation rates for prior school years to include all qualifying students in the numerator. Finally, proposed § 200.34(f) would clarify statutory requirements in section 1111(c)(4)(F) of the ESEA, as amended

by the ESSA with respect to reporting on the adjusted cohort graduation rate for students partially enrolled within a school year. It would specify that States can use either approach allowed by that section but must use the same approach across all LEAs.

*Reasons:* The current adjusted cohort graduation rate regulations in § 200.19(b) require a uniform and accurate measure of student graduation in order to hold schools, LEAs, and States accountable for increasing the number of students who graduate on time with a regular high school diploma and to provide accurate, consistent information to the public about the percentage of students graduating on time. Proposed § 200.34 would preserve existing regulatory language in order to reinforce the important progress made through the current regulations to make graduation rates a consistent and comparable measure of student success. Further, it would revise the current regulations to incorporate new statutory graduation rate requirements, including providing States a pathway to recognize graduation outcomes for students with the most significant cognitive disabilities.

Proposed § 200.34(a) would clarify statutory language to ensure that the adjusted cohort graduation rate is calculated as intended (*i.e.*, that high schools starting after grade 9 would have a graduate rate representing a time period that is shorter than 4 year), and would clarify that the State would calculate a rate based on the standard number of years for that particular school. By clarifying statutory language regarding when States may remove students from the cohort if they transfer to a prison or juvenile detention facility by specifying that such students should be treated in the same way as any other transfer, proposed § 200.34(b) would help ensure that this high-risk population of students would not disappear from a graduation cohort so that either the school or facility remains accountable for the students’ graduation outcome. In clarifying the meaning of the term “regular high school diploma,” proposed § 200.34(c) would exclude diplomas based solely on meeting IEP goals that are not fully aligned with the State’s grade-level academic content standards. This reflects the definition of a “regular high school diploma” in section 8101(43) of the ESEA, as amended by the ESSA, which states that a regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential. Because IEPs goals are

designed to meet the educational needs that result from a child’s disability, a diploma based solely on meeting IEP goals that are not fully aligned with the State’s grade-level academic content standards, is a “lesser credential” and is not equivalent to a regular high school diploma. Under ESSA, an alternate diploma must be standards-based and aligned with the State requirements for a regular high school diploma; therefore, the alternate diploma may not be based solely on meeting IEP goals that are not fully aligned with the State’s grade-level academic content standards. The Department has not yet identified a State with an alternate diploma that meets the requirements in proposed § 200.34(c) that such diploma is fully aligned to the ESSA requirements for an alternate diploma for students with the most significant cognitive disabilities. The Department will work to assist States in developing alternate diploma requirements consistent with the definition in ESSA to ensure these students are held to high standards. Further, proposed § 200.34(d) would cap the extended-year rate calculation at seven years, because such a time period is consistent with the time period during which a State may ensure the availability of FAPE and is the longest extended-year rate that the Department has approved under the current regulations.

Additionally, proposed § 200.34(e) would ensure that families and other stakeholders have timely access to comparable adjusted cohort graduation rate information by requiring on-time reporting of four-year adjusted cohort graduation rates and, if adopted by the State, extended-year adjusted cohort graduation rates and specifying that States cannot lag reporting of graduation rates for report card purposes; they must provide the data for the immediately preceding school year. Proposed § 200.34(e) would also clarify reporting requirements related to the new statutory language allowing States to include students with the most significant cognitive disabilities that earn an alternate diploma within the time period in which a State ensures the availability of a FAPE. Proposed § 200.34 would not allow States to delay reporting until after the time period in which the State ensures the availability of a FAPE has ended. States would be required to report on all students in a timely manner, but could annually update their report cards to reflect students with the most significant cognitive disabilities graduating within the time period during which the State ensures the availability of a FAPE. This

would ensure that States and LEAs will be basing decisions on the most recent data available and, as a result, that parents and other stakeholders have access to timely information on critical outcomes. In subsequent years, it also would allow a State and its LEAs to reflect graduation outcomes for students with the most significant cognitive disabilities who take longer to graduate by updating their graduation rates to additionally include those that graduated with an alternate diploma within the time period in which a State ensures the availability of a FAPE. Proposed § 200.34(e) would also maintain language from the current regulations requiring that States adopting extended-year graduation rates report them separately from their four-year rates to maintain transparent reporting on students who graduate from high school on time. Proposed § 200.34(f) would clarify the language related to partial enrollment to ensure that regardless of the approach used by the State, the information on the adjusted cohort graduation rate is comparable across districts.

Taken together, the requirements in proposed § 200.34 would generally promote increased consistency in graduation rate reporting and support States in implementing new statutory requirements related to reporting accurate and timely graduation rates. However, a number of commenters responding to the RFI expressed concern that States use different criteria for including students in certain subgroups when calculating the adjusted cohort graduation rate for inclusion on their State and LEA report cards. Accordingly, we are seeking comment on whether to regulate to standardize the criteria for including children with disabilities, English learners, children who are homeless, and children who are in foster care in their corresponding subgroups within the adjusted cohort graduation rate. For example, should a student's membership in the subgroup be determined only at the time when the student is enrolled in the cohort or should a student be included in the subgroup if the student is identified as a child with disabilities, English learner, homeless child, or child who is in foster care at any time during the cohort period? Should the criteria be standardized across subgroups, or should different criteria apply to different subgroups?

#### *Section 200.35 Per-Pupil Expenditures*

*Statute:* Section 1111(h)(1)(C)(x) and section 1111(h)(2)(C) of the ESEA, as amended by the ESSA, require a State

and its LEAs to annually report on the State and LEA report cards the per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual nonpersonnel expenditures of Federal, State, and local funds, disaggregated by source of funds, for each LEA and each school in the State for the preceding fiscal year.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 200.35 would implement the statutory provisions requiring a State and its LEAs to annually report per-pupil expenditures of Federal, State, and local funds on State and LEA report cards, disaggregated by source of funds. It would make clear that these provisions require States to develop a single, statewide procedure that LEAs must use to calculate and report LEA-level per-pupil expenditures of Federal, State, and local funds, and a separate single, statewide procedure that LEAs must use to calculate and report school-level per-pupil expenditures of Federal, State, and local funds. A State and its LEAs would also be required to provide on State and LEA report cards the Web address or URL of, or direct link to, a description of the uniform procedure for calculating per-pupil expenditures.

Proposed § 200.35 would also establish minimum requirements for the State and LEA per-pupil expenditure uniform procedure. Specifically, in calculating per-pupil expenditures, a State and its LEAs would be required to use current expenditures, include or exclude in the numerator certain types of expenditures consistent with existing Federal expenditure reporting requirements, and use an October 1 student membership count as the denominator. In addition, a State and its LEAs would be required to report per-pupil expenditures in total (*i.e.*, including all Federal, State, and local funds) and disaggregated by (1) Federal funds, and (2) State and local funds. For disaggregation purposes, proposed § 200.35 would require that title VII (Impact Aid) funds be included with State and local funds, rather than Federal funds. Lastly, proposed § 200.35 would also require a State and its LEAs to separately report the current LEA per-pupil expenditures not allocated to public schools in the State.

*Reasons:* Proposed § 200.35 is intended to clarify the statutory reporting requirements for per-pupil expenditures and help facilitate State and LEA compliance. Proposed § 200.35 would require the development of a single statewide approach for reporting LEA per-pupil expenditures and a single statewide approach for reporting per-pupil expenditure for schools,

consistent with existing Federal expenditure reporting requirements. Developing such an approach would be economical for a State and its LEAs because it aligns with existing Federal expenditure reporting requirements, allowing for more efficient administration of new collection and reporting processes. Moreover, a statewide approach for calculating per-pupil expenditures increases public awareness and accountability for any funding disparities at the school level, because it allows for accurate comparisons of resource allocations across and within LEAs, increasing transparency around State and local budget decisions.

In addition, the proposed requirement to include title VII (Impact Aid) funds as State and local funds, rather than Federal funds, in disaggregated reporting is appropriate because these funds compensate LEAs for the fiscal impact of Federal activities by partially replacing revenues that LEAs do not receive due to the exemption of Federal property from local property taxes.

Overall, proposed § 200.35 would increase the likelihood that LEAs within a State will publicly report expenditure data in a manner that is informative, accurate, comparable, and timely. It would also ensure States and LEAs are able to accurately assess resource inequities, as described in proposed §§ 200.21, 200.22, and 200.23, and would provide the public with information needed to analyze differences in school spending so they are able to, if necessary, demand a more equitable approach to school spending. In addition, by requiring States and LEAs to report expenditure data for the preceding fiscal year no later than December 31, consistent with proposed §§ 200.30(e) and 200.31(e), stakeholder awareness of LEA budget decisions from the preceding fiscal year would increase, allowing for more informed budgetary decisions in the subsequent fiscal year.

#### *Section 200.36 Postsecondary Enrollment*

*Statute:* Section 1111(h)(1)(C)(xiii) of the ESEA, as amended by the ESSA, requires a State and its LEAs to report, where available and beginning with the report card prepared for 2017, rates of enrollment of high school graduates in the academic year immediately following graduation in programs of public postsecondary education in the State and, if data are available and to the extent practicable, in programs of private postsecondary education in the State or programs of postsecondary education outside the State. The

postsecondary enrollment cohort rate must be reported in the aggregate and disaggregated by each subgroup under section 1111(c)(2) of the ESEA, as amended by the ESSA, for each high school in the State for the immediately preceding school year.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 200.36 would restate the statutory requirement that State and LEA report cards include information at the State, LEA, and school level about which students graduate from high school and enroll in programs of postsecondary education in the academic year immediately following the students' high school graduation. Proposed § 200.36 would specify that the term "program of postsecondary education" has the same meaning as the term "institution of higher education" under section 101(a) of the Higher Education Act of 1965, as amended (HEA). It also would specify, for the purpose of calculating the postsecondary enrollment cohort rate, that a State and its LEAs must use as the denominator the number of students who in the immediately preceding year graduated with a regular high school diploma or State-defined alternate diploma, as those terms are defined under proposed § 200.34. Consistent with the statutory requirement, proposed § 200.36 would require States and LEAs to report postsecondary enrollment information where the information is available for programs of public postsecondary education in the State, and if available and to the extent practicable, for programs of private postsecondary education in the State or programs of postsecondary education outside the State. It would specify that such information is available if the State is obtaining the information, or if it is obtainable, on a routine basis. In addition, States and LEAs that cannot meet the reporting requirement under proposed § 200.36 would be required to publish on their report cards the school year in which they expect to be able to report postsecondary enrollment information.

*Reasons:* Proposed § 200.36 would restate the requirements under the ESEA, as amended by the ESSA, with respect to reporting of postsecondary enrollment cohort rates. This would reinforce the emphasis on college and career readiness in the ESEA, as amended by the ESSA, by providing parents and other stakeholders with timely and comparable information about the ability of high schools to prepare students to enroll in postsecondary institutions.

By requiring States to define programs of postsecondary education using the definition in section 101(a) of the HEA, proposed § 200.36 would promote consistency in data reporting, which would allow users to compare outcomes across States, LEAs, and schools. Proposed § 200.36 would also help advance the Department's goals of raising awareness about the differences across States and LEAs in rates of enrollment in programs that are offered by accredited two- and four-year institutions by increasing the transparency of postsecondary outcomes.

Proposed § 200.36 would also clarify that the ESEA, as amended by the ESSA, requires that, in calculating a postsecondary education enrollment rate, the numerator include students who enroll in postsecondary education in the academic year immediately following their high school graduation, instead of within 16 months after receiving a high school diploma, as was the reporting requirement under the State Fiscal Stabilization Fund, a program authorized under the American Recovery and Reinvestment Act of 2009. Proposed § 200.36 would also require that the denominator include only students receiving a regular high school diploma or an alternate diploma (consistent with proposed § 200.34) in the immediately preceding school year. This is the easiest population for States to track, as it would already be a defined group for reporting on graduation rates. It is also the population of students for which high schools in the State are directly accountable in a given year. As such, outcomes for that student population are the most representative of how successfully public high schools have prepared them for postsecondary programs. Finally, by requiring a State to report information if it is routinely obtaining such information or if the information is obtainable to the State on a routine basis, we seek to ensure that as many States as possible make postsecondary education enrollment information publicly available. According to information from the Data Quality Campaign, 47 States can currently produce high school feedback reports, which are reports that provide information on a class of high school graduates and their postsecondary outcomes.<sup>18</sup> This indicates that most States will be able to meet the requirement to track postsecondary

outcomes for some, if not all, students in a graduating class. States that could not meet the reporting requirement would be required to include on their report card the date by when they expect to be able to report the information. By requiring States unable to report the information to acknowledge this limitation publicly, proposed § 200.36 would encourage those States that are not currently able to meet the requirements under this proposed section to alter their reporting processes so they can obtain and make available this information.

#### *Section 200.37 Educator Qualifications*

*Statute:* Section 1111(h)(1)(C)(ix) of the ESEA, as amended by the ESSA, requires State and LEA report cards to include the professional qualifications of teachers, including information on the number and percentage of: (1) Inexperienced teachers, principals, and other school leaders; (2) teachers teaching with emergency or provisional credentials; and (3) teachers who are not teaching in the subject or field for which the teacher is certified or licensed. This section requires that the information be presented in the aggregate and disaggregated by high-poverty compared to low-poverty schools.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 200.37 would implement statutory requirements for reporting on educator qualifications in State and LEA report cards. In addition, proposed § 200.37 would require States to adopt a uniform statewide definition of the term "inexperienced" and the phrase "not teaching in the subject or field for which the teacher is certified or licensed." Proposed § 200.37 would also define "high poverty school" as a school in the top quartile of poverty in the State and "low poverty school" as a school in the bottom quartile of poverty in the State.

*Reasons:* Proposed § 200.37 is intended to ensure consistency and comparability within States with respect to reporting on the professional qualifications of teachers, principals, and other school leaders, both overall and disaggregated by high- and low-poverty schools. Because this information is disaggregated by high-poverty compared to low-poverty schools, it will be a key indicator of equitable access to non-novice, qualified teachers and school leaders in schools across the State. Ensuring that these terms have consistent meaning when reported will increase understanding of staffing needs in high-poverty and difficult-to-staff schools and will encourage States to target efforts to

<sup>18</sup> "State by State Analysis of High School Feedback Reports." Data Quality Campaign. 2013. <http://dataqualitycampaign.org/find-resources/state-by-state-analysis-of-high-school-feedback-reports/>.

recruit, support, and retain excellent educators in these schools. To promote consistency, the Department has also proposed that a State use the same definitions of “inexperienced” and “not teaching in the subject or field for which the teacher is certified or licensed” that it adopts for reporting purposes to meet the proposed State plan requirements for educator equity in 299.18(c).

#### *Section 299.13 Overview of State Plan Requirements*

**Statute:** In order to receive Federal funding, the ESEA, as amended by the ESSA, requires each State to submit plans or applications for the following formula grant programs: Part A of title I (Improving Basic Programs Operated by LEAs); part C of title I (Education of Migratory Children); part D of title I (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk); part A of title II (Supporting Effective Instruction); part A of title III (English Language Acquisition, Language Enhancement, and Academic Advisement Act); part A of title IV (Student Support and Academic Enrichment Grants); part B of title IV (21st Century Community Learning Centers); and subpart 2 of part B of title V (Rural and Low-Income School program). Section 8302 of the ESEA, as amended by the ESSA, permits each SEA, in consultation with the Governor, to apply for program funds through the submission of a consolidated State plan or a consolidated State application.

**Current Regulations:** On May 22, 2002, the Department published in the **Federal Register** a notice of final requirements (2002 NFR) (67 FR 35967), announcing the final requirements for optional consolidated State applications submitted under section 9302 of the ESEA, as amended by NCLB. The 2002 NFR specified that States could elect to submit individual program State plans or a consolidated State application and outlined the process for submitting a consolidated State application. The 2002 NFR also described the public participation requirements for submitting a consolidated State application, the documentation requirements for demonstrating compliance with program requirements, and the authority for LEAs to receive funding by submitting a consolidated local plan to the SEA.

**Proposed Regulations:** Proposed § 299.13 would outline the general requirements for State plans authorized under the ESEA, as amended by the ESSA. The requirements in proposed § 299.13 would apply whether a State submits a consolidated State plan under

proposed § 299.14 or an individual program State plan consistent with § 299.13. The proposed regulations would create new procedural requirements for submitting and revising a State plan, including proposed deadlines for submission and proposed consultation requirements. The proposed regulations would also codify and update the requirements in the 2002 NFR for optional State consolidated applications submitted under section 9302 of the ESEA, as amended by NCLB, in order to align with the final requirements in the ESEA, as amended by the ESSA.

Proposed § 299.13(b) would require SEAs to engage in timely and meaningful consultation, including notification and outreach requirements, with required stakeholders in the development of a consolidated State plan or individual program State plans. Specifically, proposed § 299.13(b) would require SEAs to engage stakeholders during the design and development of the State plan, following the completion of the State plan, and prior to the submission of any revisions or amendments to the State plan. Additionally, proposed § 299.13(b) would require an SEA to meet the requirements of section 8540 of the ESEA, as amended by the ESSA, regarding consultation with the Governor during the development of a consolidated State plan or individual title I or title II State plan and prior to submitting that State plan to the Secretary.

Proposed § 299.13(c) would describe the assurances all SEAs would submit to the Secretary in order to receive Federal funds whether submitting an individual program State plan or a consolidated State plan. In addition to the assurances required in section 8304 of the ESEA, as amended by the ESSA, proposed § 299.13(c) would specify that the SEA would need to meet new assurances that address the requirements in title I, part A regarding partial school enrollment consistent with proposed § 200.34(f) and transportation of children in foster care to their school of origin under section 1112(c)(5)(B); part A of title III regarding English learners; and subpart 2 of part b of title V regarding the Rural and Low-Income School Program.

Proposed § 299.13(d) would specify the process for submitting a consolidated State plan or an individual program State plan including the specific timelines for submission and requirements for periodic review of State plans that SEAs must follow. Proposed § 299.13(d)(2)(i) would clarify that the Secretary has the authority to establish a deadline for submission of a

consolidated State plan or individual program State plan. Proposed § 299.13(d)(2)(ii) would clarify that an SEA's consolidated State plan or individual program State plan would be considered to be received by the Secretary for the purpose of making a determination under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA, on the deadline date established by the Secretary if it addresses all of the requirements in § 299.14 or all statutory and regulatory application requirements. Proposed § 299.13(d)(2)(iii) would require each SEA to submit either a consolidated State plan or an individual program State plan for all of the programs in proposed § 299.13(i) in a single submission. Proposed § 299.13(d)(3) would allow an SEA to request a two-year extension if it is unable to calculate and report the educator equity data outlined in proposed § 299.18(c)(3), which requires student-level data to be used in calculating disparities in access to certain types of teachers for students from low-income families and minority students, at the time it submits its initial consolidated State plan or title I, part A individual program State plan for approval.

Proposed § 299.13(e) would provide an SEA the opportunity to revise its initial consolidated State plan or its individual program State plan in response to a preliminary written determination by the Secretary. While the SEA revises its plan, the period for Secretarial review under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA, would be suspended. If an SEA failed to submit revisions to its plan within 45 days of receipt of the preliminary written determination, proposed § 299.13(e) clarifies that the Secretary would be able to issue a final written determination under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA.

Proposed § 299.13(f) would require each SEA to publish its approved consolidated State plan or its individual program State plans on the SEA's Web site. Proposed § 299.13(g) would require an SEA that makes a significant change to its State plan to submit an amendment to the Secretary for review and approval after engaging in timely and meaningful consultation as defined in proposed § 299.13(b). Proposed § 299.13(h) would also require each SEA to periodically review and revise its consolidated State plan or individual program State plans, at a minimum, every four years after engaging in timely and meaningful consultation. Each State

would submit its State plan revisions to the Department.

In addition to the programs that may be included in a consolidated State plan under section 8002(11) of the ESEA, as amended by the ESSA, proposed § 299.13(j) would include two additional programs consistent with the Secretary's authority in section 8302 of the ESEA, as amended by the ESSA: Section 1201 of title I, part B (Grants for State Assessments and Related Activities) and the Education for Homeless Children and Youths program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (McKinney-Vento).

Proposed § 299.13(k) would describe the requirements an SEA would have to meet if it chose to submit individual program State plans for one or more of the programs listed in proposed § 299.13(j) instead of including the program in a consolidated State plan. In doing so, an SEA would address all individual State plan or application requirements established in the ESEA, as amended by the ESSA for the individual programs not included in its consolidated State plan, including all required assurances and any applicable regulations. Additionally, the proposed regulations would require SEAs submitting individual program State plans to meet requirements described as part of the consolidated State plan in three places: (1) Proposed § 299.18(c) regarding educator equity when addressing section 1111(g)(1)(B) of the ESEA, as amended by the ESSA; (2) proposed § 299.19(c)(1) regarding the SEA's process and criteria for approving waivers of the 40-percent poverty threshold to operate schoolwide programs; and (3) proposed § 299.19(c)(3) regarding English learners when addressing section 3113(b)(2) of the ESEA, as amended by the ESSA.

*Reasons:* Proposed § 299.13 would establish the general requirements governing the development and submission of consolidated State plans and individual program State plans. Proposed § 299.13 is designed to ensure SEA compliance with the ESEA, as amended by the ESSA, by codifying existing requirements and providing additional clarification including with respect to consultation with stakeholders and parameters for the periodic review and revision of State plans. Proposed § 299.13(a) is necessary to establish the basic statutory framework for consolidated State plans and individual program State plans.

Section 299.13(b) proposes specific requirements to ensure timely and meaningful consultation with stakeholders when developing, revising,

or amending a State plan. The proposed regulations would clarify that timely and meaningful consultation includes both notification and outreach. The proposed regulations align with the consultation, public review, and public comment requirements in sections 1111(a)(1), 1111(a)(5), 1111(a)(8), 1111(g), 1304(c), 2101(d), and 3113(d) of the ESEA, as amended by the ESSA. Specifically, the proposed regulations would require each SEA to engage stakeholders during the design and development of the State plan, prior to the submission of the initial State plan, and prior to the submission of any revisions or amendments to the State plan. The proposed regulations would require an SEA to conduct outreach at more than one stage of State plan development because stakeholders should have an opportunity to ensure that the concerns raised during public comment are adequately considered and addressed prior to submission of a consolidated State plan or individual program State plans. Proposed § 299.13(b)(4) also codifies the statutory requirements in section 8540 of the ESEA, as amended by the ESSA, regarding consultation with the Governor in order to ensure that the SEA includes the Governor's office during the development of and prior to the submission of its consolidated State plan or individual title I or title II State plan.

Proposed § 299.13(c) would require an SEA, whether submitting a consolidated State plan or an individual program State plan, to submit to the Secretary specific assurances for certain covered programs, in addition to those assurances described in section 8304 of the ESEA, as amended by the ESSA. These additional assurances are essential for clarifying the steps all SEAs would need to implement to successfully meet statutory requirements and ensure public transparency and protections for vulnerable student populations. Consistent with section 8304 of the ESEA, as amended by the ESSA, an SEA submitting a consolidated State plan would not have to submit the individual programmatic assurances included in the ESEA, as amended by the ESSA, for programs included in its consolidated State plan. However, consistent with proposed § 299.13(l), an SEA would be required to maintain documentation of compliance with all statutory requirements, including programmatic assurances whether submitting a consolidated State plan or an individual program State plan.

Proposed § 299.13(d)(2) would clarify that the Secretary will establish a

deadline for submission of consolidated State plans or individual program State plans on a specific date and time. We intend to establish two deadlines by which each SEA would choose to submit either a consolidated State plan or individual program State plans: March 6 or July 5, 2017. Developing thoughtful State plans that consider stakeholder feedback in response to timely and meaningful consultation takes a substantial amount of time. Those States already engaging in timely and meaningful consultation and developing plans that align with the proposed requirements in § 299.14 and relevant program requirements included in the ESEA, as amended by the ESSA, would have the opportunity to submit plans in March. A second, later deadline in July 2017 would ensure that all States have sufficient time to develop thorough State plans that consider stakeholder feedback and meet the proposed requirements of § 299.14 or relevant program requirements, as applicable. The Secretary plans to request that SEAs file an optional notice of intent to submit indicating which of the two deadlines the SEA is planning towards in order to assist the Department in designing a high quality peer review process.

We recognize that some States may not have the ability to calculate and report the data outlined in proposed § 299.18(c)(3) related to educator equity. Proposed § 299.13(d)(3) would offer each State a one-time extension if it is unable to calculate and report the data outlined in proposed § 299.18(c)(3) at the student level at the time it submits its consolidated State plan or individual title I, part A program State plan for approval. We anticipate that the majority of States, including those that have received funds from the Department through the State Longitudinal Data System grant program, would not need to request such an extension.

Proposed § 299.13(e) would provide an SEA the opportunity to revise its initial consolidated State plan or its individual program State plan in response to a preliminary written determination by the Secretary regarding whether the State plan meets statutory and regulatory requirements based on comments from the required peer review process under sections 1111(a)(4) and 8451 of the ESEA, as amended by the ESSA. While the SEA revises its plan, the period of Secretarial review would be suspended. This would ensure an SEA has sufficient time to follow its process for review and revision prior to any final written determination by the Secretary under

sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA.

Proposed § 299.13(f) would require each SEA to publish its approved consolidated State plan or individual program State plans on the SEA's Web site. Section 1111(a)(5) of the ESEA, as amended by the ESSA, requires the Secretary to publish information regarding the approval of State plans on the Department's Web site to ensure transparency. Publication of the approved consolidated State plan or individual program State plans on each SEA's Web site will ensure that stakeholders have access to the valuable information in each SEA's State plan to ensure ongoing meaningful consultation with stakeholders regarding implementation of the ESEA, as amended by the ESSA.

Section 1111(a)(6)(B) of the ESEA, as amended by the ESSA, requires States to periodically review and revise State plans and submit revisions or amendments when there are significant changes to the plan. Under section 1111(a)(6)(B)(i), significant changes include the adoption of new challenging State academic standards, academic assessments or changes to its accountability system. Proposed § 299.13(g) would require an SEA to submit amendments to its State plan that reflect these changes in order to ensure transparency and compliance with statutory requirements. Consistent with section 1111(a)(6)(A)(ii) of the ESEA, as amended by the ESSA, proposed § 299.13(h) would require each SEA to periodically review all components and revise as necessary its consolidated State plan or individual program State plans, at a minimum, every four years, and submit its revisions to the Secretary. Four years is a reasonable time period because it will allow SEAs and LEAs sufficient time to implement strategies and activities outlined in its consolidated State plan or individual program State plans; collect and use data, including input from stakeholders to assess the quality of implementation; monitor SEA and LEA implementation; and continuously improve SEA and LEA strategies to ensure high-quality implementation of programs and activities under the ESEA, as amended by the ESSA. In addition, proposed § 299.13(b)(2)(iii), (g) and (h) would require a State to engage in timely and meaningful consultation prior to submitting any amendments or revisions to the Department. Soliciting stakeholder feedback on significant changes or revisions is necessary to improve implementation and ensure progress towards State and local goals. Finally, this amendment, review and

submission process would ensure that each State and the Department have the most up to date State plan information ensuring transparency and compliance with statutory requirements.

Proposed § 299.13(j) would identify the programs that may be included in a consolidated State plan under section 8302 of the ESEA, as amended by the ESSA, including section 1201 of title I, part B (Grants for State Assessments and Related Activities) and the McKinney-Vento program. Consistent with the 2002 NFR, section 1201 of title I, part B of the ESEA, as amended by the ESSA (previously section 6111 of the ESEA, as amended by NCLB), directly relates to the goals of other covered programs in that it supports State efforts to build high-quality assessment systems that are essential for informing State accountability systems and the identification of needs for subgroups of students. Proposed § 299.13(j) also would include the McKinney-Vento program because it closely aligns with the title I, part D program that is included as a covered program. Both programs—McKinney-Vento and title I, part-D—serve particularly vulnerable populations and have similar program goals.

Proposed § 299.13(k) would require an SEA that chooses to submit an individual program State plan for title I, part A to also meet the State plan requirements for consolidated State plans in proposed § 299.18(c) related to educator equity and proposed § 299.19(c)(1) related to schoolwide waivers of the 40-percent poverty threshold. An SEA that chooses to submit an individual program State plan for title III, part A must meet the State plan requirements in proposed § 299.19(c)(3) related to English learners. It is essential for all State plans to address these requirements as they provide necessary clarifications for each SEA as it addresses new statutory requirements included in the ESEA, as amended by the ESSA. Additional rationales for those sections are included in § 299.18(c) and § 299.19(c)(3).

Consistent with the 2002 NFR, proposed § 299.13(l) would emphasize the requirement that each SEA must administer all programs in accordance with all applicable statutes, regulations, program plans, and applications, and maintain documentation of this compliance.

#### *Sections 299.14 Through 299.19 Consolidated State Plans*

*Statute:* Section 8302 of the ESEA, as amended by the ESSA, permits the Secretary to establish procedures and

criteria under which, after consultation with the Governor, an SEA may submit a consolidated State plan or a consolidated State application in order to simplify the application requirements and reduce burden for SEAs. The Secretary must establish, for each covered program under section 8302 of the ESEA, as amended by the ESSA, and additional programs designated by the Secretary, the descriptions, information, assurances, and other material required to be included in a consolidated State plan or consolidated State application.

*Current Regulations:* The 2002 NFR outlines the requirements for a consolidated State application under section 9302 of the ESEA, as amended by NCLB.

*Proposed Regulations:* Proposed §§ 299.14 through 299.19 would outline the requirements for consolidated State plans authorized under section 8302 of the ESEA, as amended by the ESSA. These sections would identify those requirements that are essential for implementation of the included programs, and would eliminate duplication and streamline requirements across the included programs. Except as noted below, all of the requirements outlined in proposed §§ 299.14 through 299.19 are taken directly from the ESEA, as amended by the ESSA, and applicable regulations, including proposed regulations.

#### *Proposed § 299.14 Requirements for the Consolidated State Plan*

Proposed § 299.14(b) would establish the framework for a consolidated State plan. The Department has identified five overarching components and corresponding elements that cut across all of the included programs. Each SEA would address each component in its consolidated State plan. Within each component, each SEA would be required to provide descriptions, strategies, timelines, and funding sources, if applicable, related to implementation of the programs included in the consolidated State plan. The proposed components, as reflected in proposed §§ 299.15 through 299.19 are:

- Consultation and Coordination (proposed § 299.15);
- Challenging Academic Standards and Academic Assessments (proposed § 299.16);
- Accountability, Support, and Improvement for Schools (proposed § 299.17);
- Supporting Excellent Educators (proposed § 299.18); and
- Supporting All Students (proposed § 299.19).



Under proposed § 299.14(c), for all of the components, except Consultation and Coordination, each SEA would be required to provide a description, including strategies and timelines, of its system of performance management of implementation of State and LEA plans. This description would include the SEA's process for supporting the development, review, and approval of the activities in LEA plans; monitoring SEA and LEA implementation; continuously improving implementation; and the SEA's plan to provide differentiated technical assistance to LEAs and schools.

**Proposed § 299.15: Consultation and Coordination**

Proposed § 299.15 would combine requirements across all included programs for each SEA to engage in timely and meaningful consultation with relevant stakeholders, consistent with proposed § 299.13(b), and coordinate its plans across all programs under the ESEA, as amended by the ESSA, as well as other Federal programs such as the IDEA in order to ensure all children receive a fair, equitable, and high-quality education. SEAs that submit a consolidated State plan would address how they consulted with stakeholders for the following components of the consolidated State plan: Challenging Academic Standards and Assessments; Accountability, Support, and Improvement for Schools; Supporting Excellent Educators; and Supporting All Students.

**Proposed § 299.16: Challenging Academic Standards and Academic Assessments**

Proposed § 299.16 would outline the State plan requirements for challenging academic standards and academic assessments consistent with section 1111(b) of the ESEA, as amended by the ESSA. Proposed § 299.16(a) would include the requirements related to challenging State academic standards under section 1111(b)(1) of the ESEA, as amended by the ESSA. Specifically, this section would require each SEA to provide evidence demonstrating that: It has adopted challenging academic content standards and aligned academic achievement standards in the required subjects and grades; its alternate academic achievement standards for students with the most significant cognitive disabilities meet the requirements of section 1111(b)(1)(E) of the ESEA, as amended by the ESSA; and it has adopted English language proficiency standards consistent with the requirements of section 1111(b)(1)(F) of the ESEA, as amended

by the ESSA. Proposed § 299.16(b) would require SEAs to describe how the State is meeting the requirements related to academic assessments under section 1111(b)(2) of the ESEA, as amended by the ESSA, and the proposed requirements in §§ 200.2 to 200.6 that were subject to negotiated rulemaking under the ESSA and on which the negotiated rulemaking committee reached consensus. Specifically, each SEA would identify the high-quality student academic assessments it is implementing in the required grades and subjects, including any alternate assessments aligned to alternate academic achievement standards for students with the most significant cognitive disabilities, the annual assessment of English proficiency for all English learners, any approved locally selected nationally recognized high school assessments consistent with § 200.3, and any assessments used under the exception for advanced middle school mathematics. Each SEA would not be required to submit information and evidence that is collected as part of the Department's assessment peer review process in its State plan. Each SEA would also meet the requirements related to assessments in languages other than English consistent with proposed § 200.6 and describe how it will ensure all students have the opportunity to take advanced coursework in mathematics consistent with proposed § 200.5. Finally, each SEA would provide a description of how they intend to use the formula grant funds awarded under section 1201 of the ESEA, as amended by the ESSA to support assessment and assessment-related activities. These activities may include ensuring that assessments are high-quality, result in actionable, objective information about students' knowledge and skills; time-limited; fair for all students and used to support equity; and fully transparent to students and parents.

**Proposed § 299.17: Accountability, Support, and Improvement for Schools**

Proposed § 299.17 would include the State plan requirements related to statewide accountability systems and school support and improvement activities consistent with the requirements in section 1111(c) and 1111(d) of the ESEA, as amended by the ESSA, and proposed §§ 200.12 through 200.24. Proposed § 299.17(a) would require each SEA to provide its State-determined long-term goals and measurements of interim progress for academic achievement, graduation rates, and English language proficiency under

section 1111(c)(4)(A) of the ESEA, as amended by the ESSA, and proposed § 200.13. Consistent with section 1111(c) of the ESEA, as amended by the ESSA, and proposed §§ 200.12 through 200.20, proposed § 299.17(b) and (c) would require each SEA to describe its statewide accountability system that: Is based on challenging State academic standards for reading/language arts and mathematics; includes all indicators under proposed § 200.14 and meets the participation rate requirements under proposed § 200.15; meaningfully differentiates all public schools in the State on an annual basis under proposed § 200.18; and identifies schools for comprehensive and targeted support and improvement under proposed § 200.19.

Proposed § 299.17(d) would require each SEA to describe its State support and improvement activities for low-performing schools. Each SEA would describe how it will allocate funds consistent with the requirements under section 1003 of the ESEA, as amended by the ESSA, and proposed § 200.24, and the supports it is providing to LEAs with schools identified for comprehensive and targeted support and improvement under proposed §§ 200.21 through 200.23 in order to improve student academic achievement and school success. Proposed § 299.17(e) would require each SEA to describe its processes for approving, monitoring, and periodically reviewing LEA comprehensive support and improvement plans for identified schools consistent with section 1111(d)(1)(B) of the ESEA, as amended by the ESSA, and proposed § 200.21. Further, each SEA would describe additional activities to support continued improvement consistent with proposed § 200.23, including State review of resource allocation, technical assistance for LEAs with schools identified for comprehensive and targeted support and improvement, and additional State action to support LEA improvement.

**Proposed § 299.18: Supporting Excellent Educators**

Proposed § 299.18 would require each SEA to provide key descriptions, strategies, and funding sources outlining the State's approach to supporting excellent educators for all students. Proposed § 299.18(a) would require each SEA to describe its educator development, retention, and advancement systems consistent with the requirements in sections 2101 and 2102 of the ESEA, as amended by the ESSA. Further, in proposed § 299.18(b), each SEA would describe how it intends

to use title II, part A funds, as well as funds from other included programs, to support State-level strategies to develop, retain, and advance excellent educators in order to improve student outcomes and increase teacher and leader effectiveness. Each SEA would also describe how it will work with LEAs in the State to develop or implement State or local teacher and principal or other school leader evaluation and support systems, and how it will improve educator preparation programs if it chooses to use funds from one or more of the programs included in its consolidated State plan for these purposes.

Proposed § 299.18(c) would clarify the steps for each State to take in order to meet the statutory requirement in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, that low-income students and minority students are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. The definitions that would be required under proposed § 299.18(c)(2) ensure that calculations of disproportionality can be conducted and reported statewide using data that is similar across districts. Proposed § 299.18(c)(3) would clarify that the calculation required under proposed § 299.18(c)(1) must be conducted using student level data, subject to appropriate privacy protections. Proposed § 299.18(c)(4) and (5) would clarify the publishing and reporting expectations and specify that data on disproportionality must be reported annually to ensure transparency for parents and stakeholders regarding progress towards closing equity gaps. Proposed § 299.18(c)(6)(i) and (ii) would clarify the steps a State must take if it demonstrates under proposed § 299.18(c)(3) that low income or minority students enrolled in schools receiving funds under title I, part A of the ESEA, as amended by the ESSA, are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. These steps would include a description of the root cause analysis, including the level of disaggregation (e.g., Statewide, between districts, within district, and within school), that identifies the factor or factors causing or contributing to the disproportionate rates and providing its strategies to eliminate the disproportionate rates. Proposed § 299.18(c)(7)(i) would clarify that an SEA may direct an LEA to use a portion of its title II, part A funds, consistent with allowable uses of those funds, to support LEAs' work to eliminate disproportionalities consistent with

section 1111(g)(1)(B) of the ESEA, as amended by the ESSA. Proposed § 299.18(c)(7)(ii) would also clarify that an SEA may deny an LEA's application for title II, part A funds if an LEA fails to describe how it will address identified disproportionalities or fails to meet other local application requirements applicable to title II, part A.

#### Proposed § 299.19: Supporting All Students

Proposed § 299.19 would require each SEA to describe how it will ensure that all children have a significant opportunity to meet the State's challenging academic standards and attain a regular high school diploma. In proposed § 299.19(a)(1), each SEA would describe its strategies, rationale, timelines, and funding sources that address the continuum of a student's education from preschool through grade 12, equitable access to a well-rounded education and rigorous coursework, school conditions to support student learning, effective use of technology, parent and family engagement, and the accurate identification of English learners and children with disabilities. In developing these strategies, each SEA must consider the unique needs of all subgroups of students included in proposed § 299.19(a)(2)(i) and the information and data from a resource equity review as described in proposed § 299.19(a)(3), including the data that is collected and reported consistent with section 1111(h) of the ESEA, as amended by ESSA and proposed § 200.35 and § 200.37. Proposed § 299.19(a)(4) would require each SEA to describe how it will leverage title IV, part A and part B funds, along with other Federal funds, to support its State-level strategies described in proposed § 299.19(a)(1) and the process it will use to award subgrants authorized under included programs, as applicable.

In addition to the performance management and technical assistance requirements in proposed § 299.14(c), each SEA would describe how it uses the data described in proposed § 299.19(a)(3) to inform its review and approval of local applications for ESEA program funds.

Under proposed § 299.19(c), each SEA would be required to address essential program-specific requirements to ensure compliance with statutory requirements for particular programs included in the consolidated State plan. Proposed § 299.19(c)(1) would require each SEA to describe the process and criteria it will use under section 1114(a)(1)(B) of the Act to grant waivers of the 40-percent poverty threshold required to

operate a schoolwide program. The Department is not proposing to limit State discretion to grant such waivers, but believes it is important that each State develop and implement a process for approving requested waivers of the 40-percent schoolwide program poverty threshold that is consistent with the purposes of a schoolwide program and that protects the interests of students most at risk of not meeting challenging State academic standards.

Proposed § 299.19(c)(3) includes the new requirement in section 3113(b)(2) of the ESEA, as amended by the ESSA, for each State to establish standardized statewide entrance and exit procedures for English learners under title III. The proposed regulations would clarify that this statutory provision requires State procedures for both entrance and exit of English learners to include uniform criteria that are applied statewide.

*Reasons:* Proposed §§ 299.14 through 299.19 would ensure that each SEA provides the descriptions, information, assurances, and other materials necessary for consideration of the consolidated State plan consistent with the ESEA, as amended by the ESSA, and applicable regulations. Consistent with the principles in the ESEA, as amended by the ESSA, consolidated State plans are intended to address requirements across included programs, rather than addressing specific requirements individually for each program, many of which overlap. The proposed regulations would significantly reduce burden on each SEA choosing to submit a consolidated State plan rather than individual program State plans for the included programs outlined in proposed § 299.13(i) by eliminating duplication and streamlining requirements. The proposed regulations aim to encourage each State to think comprehensively about implementation of the ESEA, as amended by the ESSA, and leverage funding across the included programs. Further, proposed §§ 299.14 through 299.19 would help remove "silos" between different funding streams and support collaboration and efficiency across multiple programs to ensure that all children have a significant opportunity to receive a fair, equitable, and high-quality education and that each SEA continues to close achievement gaps.

In developing the framework for the consolidated State plan outlined in proposed § 299.14, we seek to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery; provide greater flexibility to State and local authorities through consolidated plans and reporting; and enhance the

integration of programs under the ESEA, as amended by the ESSA, with State and local programs. The components outlined in proposed § 299.14(b) encompass the essential statutory programmatic requirements of the included programs under the ESEA, as amended by the ESSA, and represent the core goals of equity and excellence for all students.

The proposed Performance Management and Technical Assistance requirements in § 299.14(c) are grounded in the SEA's responsibilities to support the development of, review, and approval of LEA plans; monitor SEA and LEA implementation; continuously improve implementation; and provide technical assistance to support implementation across the included programs. Proposed § 299.14(c) would focus on how the SEA will coordinate planning, monitoring, and use of data and stakeholder feedback to improve State and local plans if they are not leading to satisfactory progress towards improved student outcomes. Further, each SEA would describe how it will provide technical assistance to LEAs and schools to support and improve implementation and build capacity to support sustained improvement in student outcomes.

The consultation requirements in proposed § 299.15(a) are essential to ensuring that each SEA solicits input in the development of each component of its consolidated State plan. These requirements are consistent with the requirements for timely and meaningful consultation under proposed § 299.13(b). In addition, by requiring each SEA to describe how it is coordinating across programs with respect to each of the components, proposed § 299.15(b) would help to ensure that each SEA is thinking holistically about implementation across all programs to close achievement gaps and support all children.

Proposed § 299.16 would require each SEA to demonstrate that it is meeting the requirements in the ESEA, as amended by the ESSA and to have challenging academic standards and a high-quality, annual statewide assessment system that includes all students. Such a system is essential to provide local leaders, educators, and parents with the information they need to identify the resources and supports that are necessary to help every student succeed and continue the work toward equity and closing achievement gaps among subgroups of historically underserved students by holding all students to the same high expectations.

An SEA would not be required to submit information required under proposed § 299.16(a) and (b)(2) with its initial consolidated State plan because each SEA is required to submit such information as part of the separate peer review of State assessment systems.

The requirements in proposed § 299.17(a)–(c) would ensure accountability and support for all subgroups of students and all public schools consistent with the requirements for accountability systems in section 1111(c) of the ESEA, as amended by the ESSA, and the related regulations in proposed §§ 200.12 through 200.20. Proposed § 299.17(d) would require an SEA to describe how it will meet the statutory requirements outlined in sections 1003 and 1111(d) of the ESEA, as amended by the ESSA, and the related regulations proposed in §§ 200.21 through 200.24 related to school support and improvement. Finally, proposed § 299.17(e) would include specific performance management and technical assistance requirements consistent with proposed § 200.23. Please see proposed §§ 200.12 through 200.24 for a detailed discussion of the rationale of the proposed regulations.

Proposed § 299.18 would require each SEA to include key descriptions, strategies, and applicable funding sources to outline the State's approach to supporting excellent educators. These descriptions are necessary to provide stakeholders and the public with a complete understanding of each State's plan, coupled with the resources that each State intends to make available, for ensuring that educators have the necessary training, support, and advancement opportunities at each stage of their career to best support all subgroups of students and improve student outcomes. Proposed § 299.18(a) would require each SEA to describe its systems of educator development, retention, and advancement systems consistent with the requirements in sections 2101 and 2102 of the ESEA, as amended by the ESSA, and in doing so, would help to ensure that such systems are designed and implemented with the stakeholder awareness and input that will ultimately yield success in implementation. Proposed § 299.18(b) would support implementation of the systems described in proposed § 299.18(a) by requiring each SEA to describe how it intends to use title II, part A funds, as well as funds from other included programs, to fund strategies to support and develop excellent educators in order to improve student outcomes and increase teacher and leader effectiveness for all students.

If it chooses to use funds from one or more of the programs included in its consolidated State plan for these purposes, each State would also describe how it will work with LEAs in the State to develop or implement State or local teacher and principal or other school leader evaluation and support systems and how it will improve educator preparation programs. For States and LEAs that elect to implement such systems, teacher and principal evaluation and support systems provide rich data that enable educators to improve throughout their career. Further, high-quality educator preparation programs are essential for ensuring that all educators have the skills they need to serve student populations with unique academic and non-academic needs.

Proposed § 299.18(c) would clarify the steps each State must take to meet the statutory requirement in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, that low-income students and minority students are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. These requirements align with the work all States have been doing in recent years to develop and implement State Plans to Ensure Equitable Access to Excellent Educators (Educator Equity Plans). The definitions that would be required under proposed § 299.18(c)(2) ensure that calculations of disproportionality would be conducted and reported statewide using data that is similar across districts. The definitions must be different from each other and based on distinct criteria so that each provides useful information about educator equity and disproportionality rates. Proposed § 299.18(c)(3) would clarify that the calculations required under proposed § 299.18(c)(1) must be conducted using student level data, subject to appropriate privacy protections. Such transparency is critical to enable stakeholders and the public to understand how each State is meeting its statutory obligation under section 1111(g)(1)(B) of the ESEA, as amended by the ESSA. Student-level data are essential to illuminate within-school disproportionalities that a school-level analysis would necessarily obscure. Nevertheless, we recognize that not all States may be prepared to calculate these data at the student level by submission of their initial consolidated State plan; therefore, as described in proposed § 299.13(d)(3), we provide an opportunity for a one-time extension, if necessary. Proposed § 299.18(c)(4) and (5) would clarify the publishing and

reporting expectations and timelines for updating the data calculations described in proposed § 299.18(c)(3) to ensure transparency and a continued focus on closing any equity gaps. Additionally, proposed § 299.18(c)(6) would list the steps that would be required if a State demonstrates that low-income or minority students are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, including conducting a root cause analysis, which is critical to help States identify the underlying causes or contributing factors of any disproportionalities that exist, and describing the strategies, timelines, and funding sources the State will use to eliminate the identified disproportionality. Disproportionality may exist at many different levels (e.g., statewide, between districts, within districts, within schools), and the root cause analysis should disaggregate data sufficiently to identify the source(s) of the disproportionality. Finally, proposed § 299.18(c)(7) would clarify that an SEA may, in order to meet the requirements of section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, direct an LEA to use a portion of its title II, part A funds to eliminate disproportionalities consistent with section 1111(g)(1)(B) and deny an LEA's application for title II, part A funds if an LEA fails to describe how it will address identified disproportionalities. Proposed § 299.18(c)(7) also clarifies the SEA's authority to deny an LEA's application if the LEA fails to meet other local application requirements applicable to title II, part A. Consistent with section 432 of the General Education Provisions Act, if an SEA were to deny an LEA's application, an LEA would be entitled to an appeal of that decision to the Secretary. This clarification is necessary to enable SEAs to ensure that LEAs have adequate resources available to address existing disproportionalities.

To encourage SEAs and LEAs to think comprehensively about how to implement strategies and interventions to improve student outcomes, proposed § 299.19 would focus on support for all students, rather than separately for individual subgroups of students under each included program in order to ensure all students meet the State's challenging academic standards and attain a regular high school diploma that will prepare them to succeed in college and careers. Each SEA would describe its strategies, timelines, and funding sources for each of the requirements included in proposed § 299.19(a)(1). Requiring a State to consider a student's

education from preschool through grade 12 would support that State's efforts to ensure that all students, beginning at the earliest stage in their education and continuing through high school, have the opportunity to acquire the skills and abilities necessary to earn a high school diploma, which is critical to allow them to pursue postsecondary education or a career of their choosing. Because these skills and abilities increase over the course of a child's schooling, it is essential for States to consider equitable access across a student's educational experience, beginning in preschool and ensure that all subgroups of students have access to a well-rounded education, including accelerated and advanced coursework. Proposed § 299.19(a)(1)(iii) would emphasize school conditions for student learning consistent with the requirement in section 1111(g)(1)(C) of the ESEA, as amended by the ESSA, so all students have access to a safe and healthy learning environment. Each SEA would also describe strategies for the effective use of technology to improve academic achievement and digital literacy so all students have the skills they need to participate in the global economy. Finally, proposed § 299.19(a)(1)(v) and (vi) would require each State to include strategies for meaningful and active parent and family engagement in their children's education and ensure the accurate identification of English learners and children with disabilities.

When developing the strategies in § 299.19(a)(1), each State would be required to consider all dimensions of schooling, including both academic and nonacademic factors, for each subgroup of students and the data and information from its review of resource equity consistent with proposed § 299.19(a)(3). An SEA may describe strategies that address all or a portion of the subgroups of students, or specific strategies based on the unique needs of particular student groups. Proposed § 299.19(a)(3) would require each SEA to use information and data on resource equity that section 1111(h) of the ESEA, as amended by the ESSA and proposed § 200.35 and § 200.37, requires them to publically report. This will help each State identify inequities that may hinder a student's educational success at any point in terms of access to the well-rounded education necessary for them to meet the State's challenging academic standards and earn a high school diploma.

Proposed § 299.19(b) would require each SEA to describe how it will utilize the resource equity data and information in proposed § 299.19(a)(3) to inform the review and approval of

LEA plans and technical assistance to LEAs. This review is essential to ensure that local plans meet the unique needs of each LEA and school and SEAs target technical assistance to those LEAs and schools most in need.

In developing the consolidated State plan, we recognized that a number of covered programs include specific statutory requirements that are unique and essential to the implementation and oversight of those programs. Therefore, proposed § 299.19(c) captures those requirements to ensure each SEA provides sufficient detail to award funds for title I, part A; title I, part C; title III, part A; title V, part B, subpart 2; and the McKinney-Vento Act to supplement the descriptions, strategies, and timelines it provides in its consolidated State plan. Regarding title I, part A, proposed § 299.19(c)(1) would not limit State discretion to grant such waivers, but we believe it is important that each State develop and implement a process for approving requested waivers of the 40-percent schoolwide program poverty threshold that is consistent with the purposes of a schoolwide program and that protects the interests of students most at risk of not meeting challenging State academic standards. Regarding the title III entrance and exit procedures required by section 3113(b)(2) of the ESEA, as amended by the ESSA, proposed § 299.19(c)(3) would clarify that this statutory provision requires a State to set uniform procedures that include criteria for both entrance into and exit from the English learner subgroup that are applied statewide, and prohibits a "local option," which cannot be standardized and under which LEAs could have widely varying criteria. We consider this clarification essential so that each State will adopt uniform procedures that will increase transparency around how students are identified, ensure consistency within a State with respect to which students are identified as English learners, and promote better outcomes for English learners. Specifically, the proposed regulations would clarify that exit procedures must include objective, valid, and reliable criteria, including a score of proficient on the State's annual English language proficiency assessment, to ensure each State implements the statutory requirement regarding exit from the English learner subgroup and to ensure consistency with civil rights obligations for English learners.<sup>19</sup> Though performance on

<sup>19</sup> See, for example, U.S. Department of Education and U.S. Department of Justice joint Dear Colleague Letter, English Learner Students and Limited

content assessments may be affected by a student's level of English language proficiency, content assessments are not valid and reliable measures of English language proficiency. Relying on content assessments may result in students being included in the English learner subgroup beyond the point when they are actually English learners, which may lead to negative academic outcomes for an individual student, and, if a student held in English learner status is denied the opportunity to meaningfully participate in the full curriculum, may constitute a civil rights violation. Thus, the proposed regulations would make it clear that scores on content assessments cannot be included as part of a State's exit criteria. Finally, to ensure consistency in reporting and accountability, the proposed regulations would clarify that the State's exit criteria must be applied to both the title I subgroup and title III services, such that a student who exits English learner status based on the statewide standardized exit criteria must be considered to have exited English learner status for both title I and title III purposes. The proposed regulations would provide broad parameters, but also retain the flexibility for each State to choose its specific entrance and exit procedures.

#### **Executive Orders 12866 and 13563**

##### *Regulatory Impact Analysis*

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 the 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 stated in the Executive order.

This proposed regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives such as user fees or marketable permits, to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this

section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, we have determined that the benefits would justify the costs.

The Department believes that the majority of the changes proposed in this regulatory action would not impose significant costs on States, LEAs, or other entities that participate in programs addressed by this regulatory action. For example, the proposed regulatory framework for State accountability systems, which primarily incorporates statutory requirements, closely parallels current State systems, which include long-term goals and measurements of interim progress; multiple indicators, including indicators of academic achievement, graduation rates, and other academic indicators selected by the State; annual differentiation of school performance; the identification of low-performing schools, and the implementation of improvement plans for identified schools. In addition, the proposed regulations, consistent with the requirements of the ESEA, as amended by the ESSA, provide considerable flexibility to States and LEAs in determining the specific approaches to meeting new requirements, including the rigor of long-term goals and measurements of interim progress, the timeline for meeting those goals, the selection and weighting of indicators of student and school progress, the criteria for identification of schools for improvement, and the development and implementation of improvement plans. For example, this flexibility allows States and LEAs to build on existing measures, systems, and interventions rather than creating new ones, and to determine the most cost-efficient and least burdensome means of meeting proposed regulatory requirements, instead of a standardized set of prescriptive requirements.

The proposed regulations also reflect certain statutory changes to the accountability systems and school improvement requirements of the ESEA, as amended by the ESSA, which would result in a significant reduction in costs and administrative burdens for States and LEAs. First, the current regulations, which are based on the core goal of ensuring 100 percent proficiency in reading and mathematics for all students and all subgroups, potentially result in the identification of the overwhelming majority of participating title I schools for improvement,

corrective action, or restructuring. Such an outcome would produce unsustainable demands on State and local capacity to develop, fund, implement, and monitor school improvement plans and related school improvement supports. Indeed, it was the immediate prospect of this outcome that drove the development of, and rapid voluntary requests for, waivers of certain accountability and school improvement requirements under ESEA flexibility prior to enactment of the ESSA. The proposed accountability regulations instead would require, consistent with the requirements of the ESEA, as amended by the ESSA, more flexible, targeted systems of differentiated accountability and school improvement focused on the lowest-performing schools in each State, including the bottom five percent of schools based on the performance of all students, as well as other schools identified for consistently underperforming subgroups. Based on the experience of ESEA flexibility, the Department estimates that States would identify a total of 10,000–15,000 schools for school improvement—of which the Department estimates 4,000 will be identified for comprehensive support and improvement—nationwide under the proposed regulations, compared with as many as 50,000 under the current regulations in the absence of waivers. While the costs of carrying out required school improvement activities under the current regulations varies considerably across schools, LEAs, and States depending on a combination of factors, including the stage of improvement and locally selected interventions, it is clear that the proposed regulations would dramatically decrease potential school improvement burdens for all States and LEAs.

Second, under the proposed regulations, LEAs also would not be required to make available SES to students from low-income families who attend schools identified for improvement. This means that States would not be required to develop and maintain lists of approved SES providers, review provider performance, monitor LEA implementation of SES requirements, or set aside substantial amounts of title I, part A funding for SES. States and LEAs also would no longer be required to report on either student participation or expenditures related to public school choice or SES. While States participating in ESEA flexibility generally already have benefited from waivers of the statutory and regulatory requirements related to

public school choice and SES, the proposed regulations would extend this relief to all States and LEAs without the additional burden of seeking waivers.

Third, the proposed regulations would eliminate requirements for State identification of LEAs for improvement and the development and implementation of LEA improvement and corrective action plans. As would be the case for schools, the current regulations would require such plans for virtually all participating title I LEAs; the proposed regulations would no longer require identification of LEAs for improvement and related actions.

While most of the elements and requirements of State accountability systems required by the proposed regulations involve minimal or even significantly reduced costs compared to the requirements of the current regulations, there are certain proposed changes that could entail additional costs, as described below.

#### Goals and Indicators

Proposed § 200.13 would require States to establish a uniform procedure for setting long-term goals and measurements of interim progress for English learners that can be applied consistently and equitably to all students and schools for accountability purposes and that consider individual student characteristics (*e.g.*, grade level, English language proficiency level) in determining the most appropriate timeline and goals for attaining English language proficiency for each English learner. We estimate that each State would, on average, require 80 hours of staff time to develop the required uniform procedure. Assuming a cost of \$40 per hour for State staff, the proposed regulation would result in a one-time cost, across 50 states, the District of Columbia, and Puerto Rico would be \$166,400. We believe that the development of a uniform, statewide procedure would minimize additional costs and administrative burdens at the LEA level, and that any additional modest costs would be outweighed by the benefits of the proposed regulation, which would allow differentiation of goals for an individual English learner based on his or her language and educational background, thereby recognizing the varied needs of the English learner population. Setting the same long-term goals and measurements of interim progress for all English learners in the State would fail to account for these differences in the English learner population and would result in goals that are inappropriate for at least some students and schools.

Proposed § 200.14(b)(5) would require States to develop at least one indicator of School Quality or Student Success that measures such factors as student access to and completion of advanced coursework, postsecondary readiness, school climate and safety, student engagement, educator engagement, or any other measure the State chooses. Proposed § 200.14(c) would specify that measures within School Quality and Student Success indicators must, among other requirements, be valid, reliable, and comparable across all LEAs in the State and support meaningful differentiation of performance among schools. We recognize that the development and implementation of new School Quality and Student Success indicators, which may include the development of instruments to collect and report data on one or more such measures, could impose significant additional costs on a State that elects to develop an entirely new measure. However, the Department also believes, based in part on its experience in reviewing waiver requests under ESEA flexibility, that all States currently collect data on one or more measures that may be suitable as a measure of school quality and student success consistent with the requirements of proposed § 200.14(b)(5). Consequently, we believe that all, or nearly all, States will choose to adapt a current measure to the purposes of proposed § 200.14(b)(5), rather than developing an entirely new measure, and thus that the proposed regulation would not impose significant new costs or administrative burdens on States and LEAs.

#### Participation Rate

Proposed § 200.15(c)(2) would require an LEA with a significant number of schools that fail to assess at least 95 percent of all students or 95 percent of students in any subgroup to develop and implement an improvement plan that includes support for school-level plans to improve participation rates that must be developed under proposed § 200.15(c)(1). Proposed § 200.15(c)(2) would further require States to review and approve these LEA plans.

These proposed requirements are similar to current regulations that require States to: Annually review the progress of each LEA in making AYP; identify for improvement any LEA that fails to make AYP for two consecutive years, including any LEA that fails to make AYP as a result of not assessing 95 percent of all students or each subgroup of students; and provide technical assistance and other support related to the development and implementation of LEA improvement

plans. Current regulations also require States to take certain corrective actions in LEAs that miss AYP for four or more consecutive years, including LEAs that miss AYP due to not assessing 95 percent of all students or each subgroup of students. As noted previously, the proposed regulations would no longer require annual State review of LEA progress; State identification of LEAs for improvement; or the development, preparation, or implementation of LEA improvement or corrective action plans. This significant reduction in State burden more than offsets the proposed regulations related to reviewing and approving LEA plans to address low assessment participation rates in their schools. In addition, State discretion to define the threshold for “a significant number of schools” that would trigger the requirement for LEA plans related to missing the 95 percent participation rate would provide States a measure of control over the burden of complying with the proposed regulations. Consequently, the Department believes that the proposed regulations would not increase costs or administrative burdens significantly for States, as compared to the current regulations. Moreover, we believe that these proposed requirements would have the significant benefit of helping to ensure that the plans include effective interventions that will improve participation in assessments, facilitate transparent information for families and educators on student progress, and assist schools in supporting high-quality instruction and meeting the demonstrated educational needs of all students.

#### School Improvement Process

The school improvement requirements proposed in this regulatory action generally are similar to those required under the current regulations. The current regulations require identification of schools for multiple improvement categories, State and LEA notification of identified schools, the development and implementation of improvement plans with stakeholder involvement, State support for implementation of improvement plans, LEA provision of public school choice and SES options (the latter of which also imposes significant administrative burdens on States), and more rigorous actions for schools that do not improve over time. However, the current regulations include a prescriptive timeline under which schools that do not improve must advance to the next stage of improvement, typically only after a year or two of implementation at the previous stage (e.g., a school is given

only one year for corrective action to prove successful before advancing to restructuring). The current regulations also do not consistently allow for a planning year prior to implementation of the required improvement plans. The proposed regulations, consistent with the statute, would provide more flexibility around the timeline for identifying schools (e.g., once every three years for comprehensive support and improvement schools), up to a full year to develop comprehensive support and improvement and targeted support and improvement plans, and more time for full and effective implementation of improvement plans based on State- and LEA-determined timelines for meeting improvement benchmarks. The proposed regulations also would eliminate the public school choice and SES requirements, which impose substantial administrative costs and burdens on LEAs that are not directly related to turning around low-performing schools. We believe that the proposed regulations would thus significantly reduce the administrative burdens and costs imposed by key school improvement requirements in the current regulations.

The proposed regulations would clarify certain elements of the school improvement process required by the ESEA, as amended by the ESSA, including the needs assessment for schools identified for comprehensive support and improvement, the use of evidence-based interventions in schools identified for both comprehensive support and improvement and targeted support and improvement, and the review of resource inequities required for schools identified for comprehensive support and improvement as well as for schools identified for additional targeted support and improvement under proposed § 200.19(b)(2). Proposed § 200.21 would require an LEA with such a school to carry out, in partnership with stakeholders, a comprehensive needs assessment that takes into account, at a minimum, the school's performance on all indicators used by the State's accountability system and the reason(s) the school was identified. The proposed regulations also would require the LEA to develop a comprehensive support and improvement plan that is based on the needs assessment and that includes one or more evidence-based interventions. These proposed requirements are similar to the requirements in the current regulations, under which LEAs with schools identified for improvement must develop improvement plans that include consultation with stakeholders.

Thus we believe that the proposed regulations related to conducting a needs assessment and the use of evidence-based interventions would not increase costs or administrative burdens significantly for LEAs, as compared to the current regulations. Moreover, we believe that these proposed requirements would have the significant benefit of helping to ensure that the required improvement plans include effective interventions that meet the demonstrated educational needs of students in identified schools, and ultimately could improve outcomes for those students.

Proposed § 200.21 also would require LEAs with schools identified for comprehensive support and improvement, as well as schools identified for additional targeted support and improvement under proposed § 200.19(b)(2), to identify and address resource inequities, including any disproportionate assignment of ineffective, out-of-field, or inexperienced teachers and possible inequities related to the per-pupil expenditures of Federal, State, and local funds. While this is not a new requirement, it would involve an additional use of data and methods that LEAs would be required to develop and apply to meet other requirements in the proposed regulations, including requirements related to ensuring that low-income and minority students are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, the inclusion of per-pupil expenditure data on State and LEA report cards, and the use of per-pupil expenditure data to meet the title I supplement not supplant requirement. In addition, the proposed regulations would not specify how an LEA must address any resource inequities identified through its review. We believe it is critically important to ensure equitable access to effective teachers, and that the fair and equitable allocation of other educational resources is essential to ensuring that all students, particularly the low-achieving, disadvantaged, and minority students who are the focus of ESEA programs, have equitable access to the full range of courses, instructional materials, educational technology, and programs that help ensure positive educational outcomes.<sup>20</sup> Consequently, we believe that the benefits of the required review of resource inequities outweigh the

<sup>20</sup> See, for example, U.S. Department of Education, Office for Civil Rights Dear Colleague Letter, Resource Comparability, October 1, 2014, <http://www.ed.gov/ocr/letters/colleague-resourcecomp-201410.pdf>.



minimal additional costs that may be imposed by the proposed regulation.

Proposed § 200.21 would establish a new requirement for State review and approval of each comprehensive support and improvement plan developed by LEAs with one or more schools identified for comprehensive support and improvement, as well as proposed amendments to previously approved plans. This proposed requirement would potentially impose additional costs compared to the requirements in the current regulations. The Department estimates that States would identify approximately 4,000 schools for comprehensive support and improvement under the proposed regulations, and that it would take, on average, 20 hours for a State to review and approve each LEA comprehensive support and improvement plan, including any necessary revisions to an initial plan. Assuming a cost of \$40 per hour for State staff, the proposed review and approval process would cost an estimated total of \$3,200,000. Over the course of the four-year authorization of the law, this cost is expected to be incurred twice. We note that under the proposed regulations, States would incur these costs once every three years, when they identify schools for comprehensive support and improvement. We also note that this cost represents less than 2 percent of the funds that States are authorized to reserve annually for State-level administrative and school improvement activities under part A of title I of the ESEA, as amended by the ESSA. Given the critical importance of ensuring that LEAs implement rigorous improvement plans in their lowest-performing comprehensive support and improvement schools, and that a significant proportion of the approximately \$1 billion that States will reserve annually under section 1003 of the ESEA, as amended by the ESSA, will be used to support effective implementation of these plans, we believe that the potential benefits of State review and approval of comprehensive support and improvement plans would far outweigh the costs. Moreover, those costs would be fully paid for with formula grant funds made available through the ESEA, as amended by the ESSA, including the 1 percent administrative reservation under title I, part A and the 5 percent State-level share of section 1003 school improvement funds.

The proposed regulations also would require that the State monitor and periodically review each LEA's implementation of approved comprehensive support and

improvement plans. We believe that this proposed requirement is essentially the same as the current requirement for States to ensure that LEAs carry out their school improvement responsibilities related to schools identified for improvement, corrective action, and restructuring, as well as State-level monitoring requirements under the School Improvement Grants program. In addition, section 1003 of the ESEA, as amended by the ESSA, which requires States to reserve a total of approximately \$1 billion annually to support implementation of comprehensive support and improvement and targeted support and improvement plans, permits States to use up to 5 percent of these funds for State-level activities, including "monitoring and evaluating the use of funds" by LEAs using such funds for comprehensive support and improvement plans. For these reasons, we believe that the proposed requirement to monitor and periodically review each LEA's implementation of approved comprehensive support and improvement plans would impose few, if any, additional costs compared to current regulatory requirements, and that any increased costs would be paid for with Federal funding provided for this purpose.

States also would be required to establish exit criteria for schools implementing comprehensive support and improvement plans and for certain schools identified for additional targeted support under proposed § 200.19(b)(2) and implementing enhanced targeted support and improvement plans. In both cases, the proposed regulations would require that the exit criteria established by the State ensure that a school (1) has improved student outcomes and (2) no longer meets the criteria for identification. Schools that do not meet exit criteria following a State-determined number of years would be identified for additional improvement actions (as outlined by an amended comprehensive support and improvement plan for schools already implementing such plans, and a comprehensive support and improvement plan for schools previously identified for additional targeted support). We believe that the proposed requirement for States to establish exit criteria for schools implementing comprehensive support and improvement plans, as well as additional targeted support plans, would be minimally burdensome and entail few, if any, additional costs for States. Moreover, most States already have developed similar exit criteria for

their priority and focus schools under ESEA flexibility, and would be able to easily adapt existing criteria for use under the proposed regulations. Rigorous exit criteria linked to additional improvement actions are essential for ensuring that low-performing schools, and, more importantly, the students who attend them, do not continue to underperform for years without meaningful and effective interventions. Moreover, the additional improvement actions primarily involve revision of existing improvement plans, which would be less burdensome, for example, than moving from corrective action to restructuring under current regulations, which requires the creation of an entirely new plan involving significantly different interventions. For these reasons, we believe that the benefits of the proposed regulations would outweigh the minimal costs.

In addition to requiring States to review and approve comprehensive support and improvement plans, monitor implementation of those plans, and establish exit criteria, the proposed regulations would require States to provide technical assistance and other support to LEAs serving a significant number of schools identified either for comprehensive support and improvement or targeted support and improvement.

Proposed § 200.23 would require each State to review resource allocations periodically between LEAs and between schools. The proposed regulations also would require each State to take action, to the extent practicable, to address any resource inequities identified during its review. These reviews would not require the collection of new data and, in many cases, would likely involve re-examining information and analyses provided to States by LEAs during the process of reviewing and approving comprehensive support and improvement plans and meeting title I requirements regarding disproportionate assignment of low-income and minority students to ineffective, out-of-field, or inexperienced teachers. In addition, the proposed regulations would give States flexibility to identify the LEAs targeted for resource allocation reviews. Consequently, we believe that the proposed regulations regarding State resource allocation reviews would be minimally burdensome and entail few if any new costs, while contributing to the development of statewide strategies for addressing resource inequities that can help improve outcomes for students served under ESEA programs.

Similarly, proposed § 200.23(b) would require each State to describe in its State

plan the technical assistance it will provide to each of its LEAs serving a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement. The proposed regulations would also specify minimum requirements for such technical assistance, including a requirement that the State describe how it will assist LEAs in developing and implementing comprehensive support and improvement plans and targeted support and improvement plans, conducting school-level needs assessments, selecting evidence-based interventions, and reviewing and addressing resource inequities. We believe that the proposed regulations related to State-provided technical assistance to certain LEAs would be better differentiated, more reflective of State capacity limits, and significantly less burdensome and costly than current regulatory requirements related to LEA improvement and corrective action and the operation of statewide systems of support for schools and LEAs identified for improvement. Moreover, given the schools that would be targeted for technical assistance, most costs could be paid for with the State share of funds reserved for school improvement under section 1003 of the ESEA, as amended by the ESSA.

#### Data Reporting

The ESEA, as amended by the ESSA, expanded reporting requirements for States and LEAs in order to provide parents, practitioners, policy makers, and public officials at the Federal, State, and local levels with actionable data and information on key aspects of our education system and the students served by that system, but in particular those students served by ESEA programs. The proposed regulations would implement these requirements primarily by clarifying definitions and, where possible, streamlining and simplifying reporting requirements consistent with the purposes of the ESEA. Although the proposed regulatory changes in §§ 200.30 through 200.37 involve new requirements that entail additional costs for States and LEAs, we believe the costs are reasonable in view of the potential benefits, which include a more comprehensive picture of the structure and performance of our education system under the new law. Importantly, the ESEA, as amended by the ESSA, gives States and LEAs considerable new flexibility to develop and implement innovative, evidence-based approaches to addressing local educational needs, and the proposed regulations would

help ensure that the comprehensive data reporting requirements of the ESEA, as amended by the ESSA, capture the shape and results of that innovation without imposing unreasonable burdens on program participants.

The Department estimates that, to meet new data reporting requirements in the proposed regulations, it would impose a one-time increased burden of 230 hours per State. Assuming an average cost of \$40 an hour for State staff, we estimate a total one-time cost of \$478,400 for meeting the new State report card requirements. The Department further estimates that the preparation and dissemination of LEA report cards would require a new one-time burden of 80 hours per respondent in the first year and annual burden of 10 hours per respondent, resulting in a one-time total burden across 16,970 LEAs of 1,357,600 hours and annual burden of 169,700 hours per LEA.<sup>21</sup> Assuming an average cost of \$35 an hour for LEA staff, we estimate the one-time total cost to be \$47,516,000 and a total annual cost of \$5,939,500. The annual burden on LEAs for creating and publishing their report cards would remained unchanged at 16 hours per LEA, posing no additional costs relative to the costs associated with the current statutory and regulatory requirements. The Department believes these additional costs are reasonable for collecting essential information regarding the students, teachers, schools, and LEAs served through Federal programs authorized by the ESEA, as amended by the ESSA, that currently award more than \$23 billion annually to States and LEAs.

A key challenge faced by States in meeting current report card requirements has been developing clear, effective formats for the timely delivery of complex information to a wide range of customers. Proposed §§ 200.30 and 200.31 specifies requirements intended to promote improvements in this area, including a required overview aimed at ensuring essential information is provided to parents in a manageable, easy-to-understand format; definitions for key elements; dissemination options; accessible formats; and deadlines for publication. We believe the benefits of this proposed regulation are significant and include transparency, timeliness, and wide accessibility of data to inform educational improvement and accountability.

<sup>21</sup> 16,790 is, according to NCES data, the total number of operating school districts of all types, except supervisory unions and regional education service agencies; including these types would result in double-counting. We note that the number of LEAs fluctuates annually.

Proposed § 200.32 would streamline reporting requirements related to State and local accountability systems by permitting States and LEAs to meet those requirements by referencing or obtaining data from other existing documents and descriptions created to meet other requirements in the proposed regulations. For example, proposed § 200.32 would allow States and LEAs to meet the requirement relating to a description of State accountability systems through a link to a Web address, rather than trying to condense a complex, lengthy description of a statewide accountability system into an accessible, easy-to-understand “report card” format. Proposed § 200.33 would clarify calculations and reporting of data on student achievement and other measures of progress, primarily through modifications to existing measures and calculations. These proposed changes would help ensure that State and local report cards serve their intended purpose of providing the public with information on a variety of measures in a State’s accountability system that conveys a complete picture of school, LEA, and State performance. The proposed regulations would have a key benefit of requiring all LEA report cards to include results from all State accountability system indicators for all schools served by the LEA to ensure that parents, teachers, and other key stakeholders have access to the information for which schools are held accountable.

A critical new requirement in the ESEA, as amended by the ESSA, is the collection and reporting of per-pupil expenditures. Proposed § 200.35 includes requirements and definitions aimed at helping States and LEAs collect and report reliable, accurate, comparable data on these expenditures. We believe that these data will be essential in helping districts meet their obligations under the supplement, not supplant requirement in Title I–A, which requires districts to develop a methodology demonstrating that federal funds are used to supplement state and local education funding. In addition, making such data widely available has tremendous potential to highlight disparities in resource allocations that can have a significant impact on both the effective use of Federal program funds and educational opportunity and outcomes for the students served by ESEA programs. Broader knowledge and understanding of such disparities among educators, parents, and the public can lead to a more informed debate about how to improve the

performance of our education system, and the ESEA, as amended by the ESSA, highlights the importance of resource allocation considerations by making them a key component of school improvement plans.

Proposed § 200.36 would provide specifications for the newly required collection of information on student enrollment in postsecondary education, including definitions of key data elements. Proposed §§ 200.34 and 200.37 would clarify guidelines for calculating graduation rates and reporting on educator qualifications, respectively, and reflect a change to existing reporting requirements in current regulations rather than new items (e.g. requirements related to the reporting of highly-qualified teachers, a term that no longer exists in the ESEA, as amended by ESSA).

#### Optional Consolidated State Plans

We believe that the proposed State plan regulations in §§ 299.13 to 299.19 generally would not impose significant costs on States. As discussed in the *Paperwork Reduction Act of 1995* section of this document, we estimate that States would need on average 1,200 additional hours to carry out the requirements in the proposed State plan regulations. At \$40 per hour, the average additional State cost associated with these requirements would accordingly be an estimated \$48,000, resulting in a total cost across 52 States of \$2,496,000. We expect that States would generally use the Federal education program funds they reserve for State administration to cover these costs, and that any costs not met with Federal funds would generally be minimal.

Moreover, the proposed regulations would implement statutory provisions expressly intended to reduce burden on States by simplifying the process for applying for Federal education program funds. Section 8302 of the ESEA, as amended by the ESSA, allows States to submit a consolidated State plan in lieu of multiple State plans for individual covered programs. The Department anticipates, based on previous experience, that all States will take advantage of the option in proposed § 299.13 to submit a consolidated State plan, and we believe that the content areas and requirements proposed for those plans in §§ 299.14 to 299.19 are appropriately limited to those needed to ensure that States and their LEAs provide all children significant opportunity to receive a fair, equitable, and high-quality education and close achievement gaps, consistent with the purpose of title I of the ESEA, as amended by the ESSA.

As discussed elsewhere in this document, section 8302(a)(1) of the ESEA, as amended by the ESSA, permits the Department to designate programs for inclusion in consolidated State plans in addition to those covered by the statute. In § 299.13, the Department proposes adding to the covered programs the Grants for State Assessments and Related Activities in section 1201 of title I, part B of the ESEA, as amended by the ESSA, and the Education for Homeless Children and Youths program in subpart B of title VII of the McKinney-Vento Act. Inclusion of these programs in a consolidated State plan would further reduce the burden on States in applying for Federal education program funds.

In general, the Department believes that the costs of the proposed State plan regulations (which are discussed in more detail in the following paragraphs) are clearly outweighed by their benefits, which include, in addition to reduced burden on States: Increased flexibility in State planning, improved stakeholder engagement in plan development and implementation, better coordination in the use of Federal education program funds and elimination of funding “silos”, and a sustained focus on activities critical to providing all students with equitable access to a high-quality education.

Proposed § 299.13 would establish the procedures and timelines for State plan submission and revision, including requirements for timely and meaningful consultation with stakeholders that are based on requirements in titles I, II, and III of the ESEA, as amended by the ESSA. The Department does not believe that the proposed consultation requirements would impose significant costs on States. We expect that, as part of carrying out their general education responsibilities, States will have already developed procedures for notifying the public and for conducting outreach to, and soliciting input from, stakeholders, as the regulations would require. In the Department’s estimation, States would not incur significant costs in implementing those procedures for the State plans.

Proposed §§ 299.14 to 299.19 would establish requirements for the content of consolidated State plans (i.e., the “necessary materials” discussed in section 8302(b)(3) of the ESEA, as amended by the ESSA). Proposed § 299.14 would establish five content areas of consolidated State plans, including: Consultation and coordination (the requirements for which are specified in proposed § 299.15); challenging academic standards and assessments (in proposed

§ 299.16); accountability, support, and improvement for schools (proposed § 299.17); supporting excellent educators (proposed § 299.18); and supporting all students (proposed § 299.19). We believe that, in general, the proposed requirements for these content areas would minimize burden on States insofar as they consolidate duplicative requirements and eliminate unnecessary requirements from State plans for individual covered programs.

Proposed § 299.15 would require States to describe how they engaged in timely and meaningful consultation with specified stakeholder groups in consolidated State plan development and how they are coordinating administration of covered programs and other Federal education programs. We estimate that the costs of complying with the proposed requirements in this section would be minimal.

Proposed § 299.16 would require States to demonstrate that their academic standards and assessments meet the requirements in section 1111(b) of the ESEA, as amended by the ESSA, and to describe how they will use Grants for State Assessments and Related Activities program funds to develop and administer such assessments or carry out other allowable activities. These proposed requirements would not impose significant new costs on States, which are already separately engaged in a review of their standards and assessment systems that would satisfy the applicable proposed requirements in this section.

The Department believes that the proposed requirements in §§ 299.17 and 299.18 would similarly not involve significant new costs for most States. Proposed § 299.17 would establish consolidated State plan requirements for describing the State’s long-term goals, accountability system, school identifications, and support for low-performing schools, consistent with the requirements in section 1111(c) and (d) of the ESEA, as amended by the ESSA. Proposed § 299.18 would require States to describe their educator development, retention, and advancement systems and their use of Federal education program funds for State-level activities to improve educator quality and effectiveness, and to demonstrate that low-income and minority students in title I-participating schools are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers compared to their peers, consistent with the requirements in sections 1111(g), 2101, and 2102 of the ESEA, as amended by the ESSA. The Department anticipates that, in complying with proposed

§§ 299.17 and 299.18, States would rely to some degree on existing State ESEA flexibility requests and Educator Equity Plans. Accordingly, the proposed regulations should generally not result in significant new costs for States.

Finally, proposed § 299.19 would require States to describe how they and their LEAs are using Federal and other funds to close achievement gaps and provide all students equitable access to a high-quality education, and would include program-specific requirements necessary to ensure that such access is provided to particularly vulnerable student groups, including migrant students, English learners, and homeless children and youths. We believe that the proposed requirements in this section would accomplish this purpose with minimal burden on, and cost to, States,

consistent with section 8302(b)(3) of the ESEA, as amended by the ESSA.

The major benefit of these proposed regulations, taken in their totality, is a more flexible, less complex and costly accountability framework for the implementation of the ESEA that respects State and local decision-making while continuing to ensure that States and LEAs use ESEA funds to ensure that all students have significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.

#### Accounting Statement

As required by OMB Circular A–4 (available at [www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf)), in the following table we have prepared an accounting statement

showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in annual monetized costs, benefits as a result of the proposed regulations. The transfers reflect appropriations for the affected programs. We note that the regulatory baselines differ within the table; the cost estimates are increments over and above what would be spent under ESEA if it had not been amended with ESSA, whereas the transfers (appropriations) are totals, rather than increments relative to ESEA. We further note that, although we refer to appropriations amounts as transfers, where they pay for new activities they would appropriately be categorized as costs.

#### ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Benefits
More flexible and less complex and costly accountability framework with uniform procedures.	Not Quantified.
More transparency and actionable data and information with uniform definitions, all of which provide a more comprehensive picture of performance and other key measures.	Not Quantified.
Less burden on States through simplified process for applying and planning for Federal education program funds.	Not Quantified.
Category	Costs (over 4-year authorization)
Uniform procedure for setting long-term goals and measurements of interim progress for English learners.	\$166,400.
Review and approval of LEA comprehensive support and improvement plans.	\$6,400,000.
State Report Cards .....	\$478,400.
LEA Report Cards .....	\$65,334,500.
Consolidated State Plans .....	\$2,496,000.
Category	Transfers (over 4-year authorization; based on FY 2016 appropriations)
Title I, part A: Improving Basic Programs Operated by State and Local Educational Agencies.	\$59,639,208,000.
Title I, part B: Grants for State Assessments .....	\$1,512,000,000.
Title I, part C: Education of Migratory Children .....	\$1,499,004,000.
Title I, part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk.	\$190,456,000.
Title II, part A: Supporting Effective Instruction .....	\$9,399,320,000.
Title III, part A: Language Instruction for English Learners and Immigrant Students.	\$2,949,600,000.
Title IV, part A: Student Support and Academic Enrichment Grants .....	\$6,450,000,000 (no FY 2016 funding; reflects authorization of appropriations).
Title IV, part B: 21st Century Community Learning Centers .....	\$4,666,692,000.
Title V, part B, Subpart 2: Rural and Low-Income School Program .....	\$351,680,000.
Education for Homeless Children and Youths program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act.	\$280,000,000.

#### Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum “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 interferes 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, § 361.1 Purpose.)

- 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?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

#### *Unfunded Mandates Reform Act*

Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), an agency must assess the effects of its regulatory actions on State, local, and tribal governments. The Department has set forth that assessment in the *Regulatory Impact Analysis*. The UMRA in § 1532 also requires that an agency provide a written statement regarding any regulation that would involve a Federal mandate. These proposed regulations do not involve a Federal mandate as defined in § 658 of UMRA because the duties imposed upon State, local, or tribal governments in these regulations are a condition of those governments' receipt of Federal formula grant funds under the ESEA.

#### *Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed requirements would not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or school districts (LEAs) with a population of less than 50,000. Although the majority of LEAs that receive ESEA funds qualify as small entities under this definition, the requirements proposed in this document would not have a significant economic impact on these small LEAs because the costs of implementing these requirements would be covered by funding received by these small LEAs under ESEA formula grant programs, including programs that provide funds exclusively for such small LEAs (e.g., the Rural and Low-Income School

program authorized under subpart 2 of part B of title V). The Department believes the benefits provided under this proposed regulatory action outweigh the burdens on these small LEAs of complying with the proposed requirements. In particular, the proposed requirements would help ensure that State plans for using ESEA formula grant funds, as well as State-provided technical assistance and other support intended to promote the effective and coordinated use of Federal, State, and local resources in ensuring that all students meet challenging State standards and graduate high school college- and career-ready, reflect the unique needs and circumstances of small LEAs and ensure the provision of educational resources that otherwise may not be available to small and often geographically isolated LEAs. The Secretary invites comments from small LEAs as to whether they believe the requirements proposed in this document would have a significant economic impact on them and, if so, requests evidence to support that belief.

#### *Paperwork Reduction Act of 1995*

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 200.30, 200.31, 200.32, 200.33, 200.34, 200.35, 200.36, 200.37, and 299.13 contain information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection

of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we will display the OMB control numbers assigned by OMB to any information collection requirement in the proposed regulations and adopted in the final regulations.

The proposed regulations would affect two currently approved information collections, 1810–0576 and 1810–0581. Under 1810–0576, *Consolidated State Application*, the Department is approved to collect information from States. We will replace the previously authorized consolidated State plan, authorized under section 8302 of the ESEA, as amended by the ESSA. The consolidated State plan seeks to encourage greater cross-program coordination, planning, and service delivery; to enhance program integration; and to provide greater flexibility and less burden for States. We will use the information from the consolidated State plan as the basis for approving funding under the covered programs. Under the proposed regulations, a State would be required to update its consolidated State plan at least every four years.

Proposed § 299.13 would permit a State to submit a consolidated State plan, instead of individual program applications. Each consolidated State plan must meet the requirements described in proposed §§ 299.14 to 299.19.

States may choose not to submit consolidated State plans; however, for purposes of estimating the burden, we will assume all States will choose to submit consolidated State plans. We estimate that over the three-year period for which we seek information collection approval, each of the 52 grantees will spend 1,200 additional hours developing the accountability systems to be described in the consolidated State plans, reporting on all elements that must be described in the consolidated State plans, and making any optional amendments to the consolidated State plans. Accordingly, we anticipate the total additional burden over three years to be 62,400 hours for all respondents, resulting in an increased annual burden of 20,800 hours under current information collection 1810–0576. Overall, the total burden under OMB 1810–0576 will be 23,200.

## COLLECTION OF INFORMATION FROM SEAS: CONSOLIDATED STATE PLAN

Regulatory section	Information collection	OMB Control No. and estimated change in burden
§ 299.13 .....	This proposed regulatory provision would allow States to submit consolidated State plans.	OMB 1810–0576. The burden would increase by 20,800 hours.

Under 1810–0581, *State Educational Agency, Local Educational Agency, and School Data Collection and Reporting Under ESEA, Title I, Part A*, the Department is approved to require States and LEAs to collect and disseminate information. The information collection currently authorizes the Department to require States and LEAs to develop and disseminate report cards, as well as information previously required through ESEA flexibility. The proposed regulations in §§ 200.30 to 200.37 would require additional burden, as they would require States and LEAs to revise the current report cards to include additional elements. However, the revised information collection would also reduce some of the existing burden, due to the elimination of currently approved reporting requirements and adjustments in the estimated time required to report on other required elements.

Section 1111(h) of the ESEA, as amended by the ESSA, requires States and LEAs to prepare and disseminate annual report cards; these report cards provide essential information to school communities regarding activities under title I of the ESEA.

Proposed § 200.30(a) would require each State to prepare and disseminate an annual State report card, and proposed 200.30(c) would require each annual State report card to be accessible. Currently, under 1810–0581, the Department estimates that the preparation and dissemination of State report cards requires 370 hours per respondent, resulting in a total burden

across 52 States of 19,240 hours annually. On an annual basis, the Department estimates that the preparation and dissemination of accessible State report cards will continue to take 370 hours per respondent. However, as described below, the Department also anticipates a one-time increase in burden relating to some report card elements, based upon the changes in the proposed regulations.

Proposed § 200.30(b)(2) would require each State to add an overview to each report card. We anticipate that these requirements would require a one-time increase in burden for each State of 80 hours, for a total increase in burden across 52 grantees of 4,160 hours. Over the three-year period for which we seek approval for this information collection, this would result in an annual increase in burden of 1,387 hours.

Proposed § 200.30(e) would require each State that is unable to update its State and LEA report cards to reflect the proposed regulations by the established deadline to request an extension of the deadline, and to submit a plan to the Secretary addressing the steps the State will take to update the report cards. We anticipate the development of such a plan would require a one-time increase in burden for 15 States of 50 hours, for a total increase in burden of 750 hours. Over the three-year period for which we seek approval for this information collection, this would result in an annual increase in burden of 250 hours.

Proposed § 200.32(a) would require each State to describe provide a description of the State's accountability system. We anticipate that this

requirement would add a one-time increase in burden for each State of 30 hours, for a total increase in burden across 52 grantees of 1,560 hours. Over the three-year period for which we seek approval for this information collection, this would result in an annual increase in burden of 520 hours.

Proposed §§ 200.32(c), 200.33, 200.34, 200.35, 200.36 and 200.37 would establish new requirements regarding the ways in which States calculate and report elements that are required on the State and LEA report cards. In total, we anticipate that these requirements would require a one-time increase in burden for each State to adjust its data system to address these requirements of 120 hours, for a total increase in burden across 52 grantees of 6,240 hours. Over the three-year period for which we seek approval for this information collection, this would result in an annual increase in burden of 2,080 hours.

Additionally, under 1810–0581, the Department is authorized to collect information regarding SES providers and ESEA flexibility. As SES is not required, and ESEA flexibility is not applicable, under the ESEA, as amended by the ESSA, we intend to reduce the burden attributable to these elements. The Department also includes burden estimates for some reporting requirements that we now intend to reduce, because these elements include data system adjustments that have already been completed. These changes decrease the annual burden for SEAs by 35,426 hours. Overall, the total burden for SEAs under 1810–0581 is reduced by 31,189 hours.

## COLLECTION OF INFORMATION FROM SEAS: REPORT CARDS

Regulatory section	Information collection	OMB Control No. and estimated change in burden
§ 200.30(a); § 200.30(c); § 200.30(d).	The proposed regulatory provisions would require States to prepare and disseminate widely an annual State report card, and to ensure that the report cards are accessible.	OMB 1810–0581. No changes. The current information collection assumes that each State will require 370 hours to report the results of its accountability systems, for a total burden of 19,240 hours. The proposed regulations do not affect this estimate.
§ 200.30(b)(2) .....	The proposed regulatory provision would require State report cards to include an overview.	OMB 1810–0581. We estimate that the burden would increase by 1,387 hours.
§ 200.30(e) .....	The proposed regulatory provision would require any State that is unable, to update its State or LEA report cards with required elements by the deadline to develop and submit plans for updating the report cards.	OMB 1810–0581. We estimate the burden would increase by 250 hours.
§ 200.32(a) .....	The proposed regulatory provisions would require State report cards to include a description of the State's accountability system.	OMB 1810–0581. We estimate that the burden would increase by 520 hours.

## COLLECTION OF INFORMATION FROM SEAS: REPORT CARDS—Continued

Regulatory section	Information collection	OMB Control No. and estimated change in burden
§ 200.32(c); § 200.33; § 200.34; § 200.35; § 200.36; § 200.37.	The proposed regulatory provisions would establish requirements regarding the ways in which States calculate certain data elements required on report cards.	OMB 1810–0581. The burden would increase by 2,080 hours.
None .....	Due to statutory changes under the Act, the Department reduces the burden estimates, as the Department will no longer collect previously approved information, as described above.	OMB 1810–0581. The burden would decrease by 35,426 hours.

Proposed §§ 200.21(d)(6) and 200.22(d)(2) would require each LEA to make publicly available, including by notifying parents under proposed §§ 200.21(b) and 200.22(b), the comprehensive and targeted support and improvement plans, including any amendments, for all identified schools served by the LEA to help ensure that plans may be developed in partnership with parents, teachers, and principals and other school leaders. We estimate that the resulting burden for each LEA will be 30 hours, on average, resulting in a total burden for 16,970 LEAs of 509,100 hours. Over the three-year period for which we seek approval, this would result in an annual increase in burden of 169,700 hours.

Proposed § 200.31(a) would require each LEA to prepare and disseminate an annual LEA report card, and proposed § 200.31(c) would require each annual LEA report card to be accessible. Currently, under 1810–0581, the Department estimates that the preparation and dissemination of LEA report cards requires 16 hours per respondent; we do not anticipate that

the annual burden for each respondent will change, based upon the proposed regulations. However, we are changing the burden estimate, based upon an increase in the number of LEAs according to the most recently available data; there are currently 16,970 LEAs, an increase of 3,883 LEAs from the last estimate. As a result, we increase the estimated annual burden for preparation and dissemination of LEA report cards by 16 hours for each of these LEAs not previously incorporated, or 62,128 hours.

Proposed § 200.31(b)(2) would require each LEA to add an overview to each report card. We anticipate that these requirements would require a one-time increase in burden for each LEA of 80 hours, for a total increase in burden across 16,970 LEAs of 1,357,600 hours. Over the three-year period for which we seek approval, this would result in an annual increase in burden of 452,533 hours.

Proposed §§ 200.32 to 200.37 would establish requirements regarding the ways in which LEAs calculate and report elements that are currently

required on the LEA report cards. However, we expect that the increase in burden resulting from these required changes would be addressed by similar required changes in the State's data system. Therefore, we do not anticipate an increase in the burden on LEAs resulting from these requirements.

Additionally, under 1810–0581, the Department is authorized to collect information regarding requirements from the ESEA, as amended by the NCLB, which are no longer applicable, such as restructuring plans for schools that do not meet AYP. The Department also includes in this information collection burden estimates for some reporting requirements that we now intend to reduce, because these elements include data system adjustments that have already happened. These changes result in a total decrease in annual burden for LEAs of 1,261,039 hours. Overall, based on the addition of new burden and the removal of burden that is no longer applicable, the total burden for LEAs under 1810–0581 is reduced by 786,070 hours.

## COLLECTION OF INFORMATION FROM LEAS: REPORT CARDS AND PUBLIC REPORTING

Regulatory section	Information collection	OMB Control No. and estimated change in burden
§ 200.21(b); § 200.21(d)(6); § 200.22(b); § 200.22(d)(2).	The proposed regulatory provisions would require LEAs with schools identified for comprehensive or targeted support and improvement to make publicly available the resulting plans and any amendments to these plans, including notifying parents of the identification.	OMB 1810–0581. The burden would increase by 169,700 hours.
§ 200.31(a); § 200.31(c); § 200.31(d).	Adjusted estimate regarding the burden hours for preparation and dissemination of LEA report cards, including the requirement these reports cards are accessible to parents.	OMB 1810–0581. The burden would increase by 62,128 hours.
§ 200.31(b) .....	The proposed regulatory provisions would require LEAs to develop an overview of the report cards.	OMB 1810–0581. The burden would increase by 452,533 hours.
None .....	Adjusted burden estimate, based upon changes to the reporting requirements from the ESEA, as amended by the NCLB, to the ESEA, as amended by the ESSA.	OMB 1810–0581. The burden would decrease by 786,070 hours.

We have prepared an Information Collection Request (ICR) for these collections. If you want to review and comment on the ICR please follow the instructions listed under the **ADDRESSES** section of this document. Please note the Office of Information and Regulatory

Affairs (OMB) and the Department review all comments on an ICR that are posted at [www.regulations.gov](http://www.regulations.gov). In preparing your comments you may want to review the ICR in [www.regulations.gov](http://www.regulations.gov) or in [www.reginfo.gov](http://www.reginfo.gov). The comment period

will run concurrently with the comment period for the proposed regulations. When commenting on the information collection requirements, we consider your comments on these collections of information in—



- Deciding whether the 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 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.

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 your comments by June 30, 2016. This does not affect the deadline for your comments to us on the proposed regulations.

**ADDRESSES:** Comments submitted in response to this document should be submitted electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) by selecting Docket ID ED–2016–OESE–0032 or via postal mail commercial delivery, or hand delivery. Please specify the Docket ID number and indicate “Information Collection Comments” on the top of your comments if your comment relates to the information collections for the proposed regulations. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., Mailstop L–OM–2–2E319LBJ, Room 2E115, Washington, DC 20202–4537. Comments submitted by fax or email and those submitted after the comment period will not be accepted.

**FOR FURTHER INFORMATION CONTACT:**

Electronically mail [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Please do not send comments here.

*Intergovernmental Review*

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

*Assessment of Educational Impact*

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on

whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number does not apply.)

**List of Subjects**

*34 CFR Part 200*

Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements

*34 CFR Part 299*

Administrative practice and procedure, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

Dated: May 23, 2016.

**John B. King, Jr.,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 200 and 299 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 is revised to read as follows:

**Authority:** 20 U.S.C. 6301 through 6376, unless otherwise noted.

**§ 200.7 [Removed and Reserved]**

■ 2. Remove and reserve § 200.7.

■ 3. Section 200.12 is revised to read as follows:

**§ 200.12 Single statewide accountability system.**

(a)(1) Each State must describe in its State plan under section 1111 of the Act that the State has developed and will implement, beginning no later than the 2017–2018 school year, a single, statewide accountability system that meets all requirements under paragraph (b) of this section in order to improve student academic achievement and school success among all public elementary and secondary schools, including public charter schools.

(2) A State that submits an individual program State plan for subpart A of this part under § 299.13(j) must meet all application requirements in § 299.17.

(b) The State’s accountability system must—

(1) Be based on the challenging State academic standards under section 1111(b)(1) of the Act and academic assessments under section 1111(b)(2) of the Act, and include all indicators under § 200.14;

(2) Be informed by the State’s long-term goals and measurements of interim progress under § 200.13;

(3) Take into account the achievement of all public elementary and secondary school students, consistent with §§ 200.15 through 200.17 and 200.20;

(4) Be the same accountability system the State uses to annually meaningfully differentiate all public schools in the State under § 200.18, and to identify schools for comprehensive and targeted support and improvement under § 200.19; and

(5) Include the process the State will use to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all public schools accountable for student academic achievement and school success consistent with §§ 200.21 through 200.24.

(c) The accountability provisions under this section must be overseen for public charter schools in accordance with State charter school law.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 1221e–3)

■ 4. Remove the undesignated center heading “Adequate Yearly Progress (AYP)” following § 200.12.

■ 5. Section 200.13 is revised to read as follows:

### § 200.13 Long-term goals and measurements of interim progress.

In designing its statewide accountability system under § 200.12, each State must establish long-term goals and measurements of interim progress for, at a minimum, each of the following:

(a) *Academic achievement.* (1) Each State must describe in its State plan under section 1111 of the Act how it has established ambitious State-designed long-term goals and measurements of interim progress for improved academic achievement, as measured by grade-level proficiency on the annual assessments required under section 1111(b)(2)(B)(v)(I) of the Act, for all students and separately for each subgroup of students described in § 200.16(a)(2).

(2) In establishing the long-term goals and measurements of interim progress under paragraph (a)(1) of this section, a State must—

(i) Apply the same high standards of academic achievement to all public school students in the State, except as provided for students with the most significant cognitive disabilities consistent with section 1111(b)(1) of the Act;

(ii) Set the same multi-year timeline to achieve the State's long-term goals for all students and for each subgroup of students;

(iii) Measure achievement separately for reading/language arts and for mathematics; and

(iv) Take into account the improvement necessary for each subgroup of students described in § 200.16(a)(2) to make significant progress in closing statewide proficiency gaps, such that the State's measurements of interim progress require greater rates of improvement for subgroups of students that are lower-achieving.

(b) *Graduation rates.* (1) Each State must describe in its State plan under section 1111 of the Act how it has established ambitious State-designed long-term goals and measurements of interim progress for improved graduation rates for all students and separately for each subgroup of students described in § 200.16(a)(2).

(2) A State's long-term goals and measurements of interim progress under paragraph (b)(1) of this section must include—

(i) The four-year adjusted cohort graduation rate consistent with § 200.34(a); and

(ii) If a State chooses to use an extended-year adjusted cohort graduation rate as part of its Graduation Rate indicator under § 200.14(b)(3), the

extended-year adjusted cohort graduation rate consistent with § 200.34(d), except that a State must set more rigorous long-term goals for such graduation rate, as compared to the long-term goals for the four-year adjusted cohort graduation rate.

(3) In establishing the long-term goals and measurements of interim progress under paragraph (b)(1) of this section, a State must—

(i) Set the same multi-year timeline to achieve the State's long-term goals for all students and for each subgroup of students; and

(ii) Take into account the improvement necessary for each subgroup of students described in § 200.16(a)(2) to make significant progress in closing statewide graduation rate gaps, such that a State's measurements of interim progress require greater rates of improvement for subgroups that graduate high school at lower rates.

(c) *English language proficiency.* (1) Each State must describe in its State plan under section 1111 of the Act how it has established ambitious State-designed long-term goals and measurements of interim progress for English learners toward attaining English language proficiency, as measured by the English language proficiency assessment required in section 1111(b)(2)(G) of the Act.

(2) The goals and measurements of interim progress under paragraph (c)(1) of this section—

(i) Must set expectations that each English learner will—

(A) Make annual progress toward attaining English language proficiency; and

(B) Attain English language proficiency within a period of time after the student's identification as an English learner, except that an English learner that does not attain English language proficiency within such time must not be exited from English learner services or status; and

(ii) Must be determined using a State-developed uniform procedure applied consistently to all English learners in the State that takes into consideration, at the time of a student's identification as an English learner, the student's English language proficiency level, and may take into consideration, at a State's discretion, one or more of the following student characteristics:

(A) Time in language instruction educational programs.

(B) Grade level.

(C) Age.

(D) Native language proficiency level.

(E) Limited or interrupted formal education, if any.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 1221e–3)

■ 6. Section 200.14 is revised to read as follows:

### § 200.14 Accountability indicators.

(a) In its statewide accountability system under § 200.12, each State must, at a minimum, include four distinct indicators for each school that—

(1) Measure performance for all students and separately for each subgroup of students under § 200.16(a)(2); and

(2) Use the same measures within each indicator for all schools in the State, except as provided in paragraph (c)(2) of this section.

(b) A State must annually measure the following indicators consistent with paragraph (a) of this section:

(1) For all schools, an Academic Achievement indicator which—

(i) Must equally measure grade-level proficiency on the annual reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I) of the Act;

(ii) Must include the performance of at least 95 percent of all students and 95 percent of all students in each subgroup consistent with § 200.15(b)(1); and

(iii) For high schools, may also measure, at the State's discretion, student growth based on the reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(2) For elementary and secondary schools that are not high schools, an Academic Progress indicator, which must include either—

(i) A measure of student growth based on the annual assessments required under section 1111(b)(2)(B)(v)(I) of the Act; or

(ii) Another academic measure that meets the requirements of paragraph (c) of this section.

(3) For high schools, a Graduation Rate indicator, which—

(i) Must measure the four-year adjusted cohort graduation rate consistent with § 200.34(a); and

(ii) May measure, at the State's discretion, the extended-year adjusted cohort graduation rate consistent with § 200.34(d).

(4) For all schools, a Progress in Achieving English Language Proficiency indicator, based on English learner performance on the annual English language proficiency assessment required under section 1111(b)(2)(G) of the Act in each of grades 3 through 8 and in grades for which English learners are otherwise assessed under section 1111(b)(2)(B)(v)(I)(bb) of the Act, that—

(i) Takes into account students' English language proficiency level and,

at a State's discretion, one or more student characteristics in the same manner in which the State determines its long-term goals for English learners under § 200.13(c)(2)(ii);

(ii) Uses objective and valid measures of progress such as student growth percentiles;

(iii) Is aligned with the State-determined timeline for attaining English language proficiency under § 200.13(c)(2)(i)(B); and

(iv) May also include a measure of proficiency (*e.g.*, an increase in percentage of English learners scoring proficient on the English language proficiency assessment required under section 1111(b)(2)(G) of the Act compared to the prior year).

(5) One or more indicators of School Quality or Student Success that meets the requirements of paragraph (c) of this section, which may vary by each grade span and include indicators of one or more of the following:

(i) Student access to and completion of advanced coursework.

(ii) Postsecondary readiness

(iii) School climate and safety.

(iv) Student engagement.

(v) Educator engagement.

(vi) Any other indicator the State chooses that meets the requirements of paragraph (c) of this section.

(c) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within an indicator under this section—

(1) Is valid, reliable, and comparable across all LEAs in the State;

(2) Is calculated in the same way for all schools across the State, except that measures within the indicator of Academic Progress and within any indicator of School Quality or Student Success may vary by each grade span;

(3) Is able to be disaggregated for each subgroup of students described in § 200.16(a)(2); and

(4) Is used no more than once in its system of annual meaningful differentiation under § 200.18.

(d) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within the indicators of Academic Progress and School Quality or Student Success is supported by research that performance or progress on such measures is likely to increase student achievement or, for measures within indicators at the high school level, graduation rates.

(e) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within the indicators of Academic Progress and School Quality or Student Success aids in the meaningful

differentiation of schools under § 200.18 by demonstrating varied results across all schools in the State.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 1221e–3)

■ 7. Section 200.15 is revised to read as follows:

**§ 200.15 Participation in assessments and annual measurement of achievement.**

(a)(1) Each State must annually measure the achievement of at least 95 percent of all students, and 95 percent of all students in each subgroup of students under § 200.16(a)(2), who are enrolled in each public school on the assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(2) Each State must measure participation rates under paragraph (a)(1) of this section separately in reading/language arts and mathematics.

(b) For purposes of annual meaningful differentiation under § 200.18 and identification of schools under § 200.19, a State must—

(1) Calculate any measure in the Academic Achievement indicator under § 200.14(b)(1) so that the denominator of such measure, for all students and for all students in each subgroup, includes the greater of—

(i) 95 percent of all such students in the grades assessed who are enrolled in the school; or

(ii) The number of all such students enrolled in the school who are participating in the assessments required under section

1111(b)(2)(B)(v)(I) of the Act; and

(2) Factor the requirement for 95 percent student participation in assessments under paragraph (a) of this section into its system of annual meaningful differentiation so that missing such requirement, for all students or for any subgroup of students in a school, results in at least one of the following actions:

(i) A lower summative rating in the State's system of annual meaningful differentiation under § 200.18(b)(4).

(ii) The lowest performance level on the Academic Achievement indicator in the State's system of annual meaningful differentiation under § 200.18(b)(3).

(iii) Identification for, and implementation of, a targeted support and improvement plan consistent with the requirements under § 200.22.

(iv) Another equally rigorous State-determined action described in its State plan under section 1111 of the Act that will result in a similar outcome for the school in the system of annual meaningful differentiation and will improve the school's participation rate so that the school meets the

requirements under paragraph (a) of this section. (c) To support the State in meeting the requirements of paragraph (a) of this section—

(1) A school that fails to assess at least 95 percent of all students or 95 percent of each subgroup of students must develop and implement an improvement plan that—

(i) Is developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents);

(ii) Includes one or more strategies to address the reason or reasons for low participation rates in the school and improve participation rates in subsequent years;

(iii) Is approved by the LEA prior to implementation; and

(iv) Is monitored, upon submission and implementation, by the LEA; and

(2) An LEA with a significant number of schools that fail to assess at least 95 percent of all students or 95 percent of each subgroup of students must develop and implement an improvement plan that includes additional actions to support effective implementation of the school-level plans developed under paragraph (c)(1) and that is reviewed and approved by the State.

(3) If a State chooses to identify a school for targeted support and improvement under paragraph (b)(2)(iii) of this section, the requirement for such a school to develop and implement a targeted support and improvement plan consistent with § 200.22 fulfills the requirements of this paragraph.

(d)(1) A State must provide a clear and understandable explanation of how it has met the requirements of paragraph (b) of this section in its State plan under section 1111 of the Act and in its description of the State's system for annual meaningful differentiation of schools on its State report card pursuant to section 1111(h)(1)(C)(i)(IV) of the Act.

(2) A State, LEA, or school may not systematically exclude students in any subgroup of students under § 200.16(a) from participating in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(3) To count a student who is assessed based on alternate academic achievement standards described in section 1111(b)(1)(E) of the Act as a participant for purposes of meeting the requirements of this section, the State must have guidelines that meet the requirements described in section 1111(b)(2)(D)(ii) of the Act and must ensure that its LEAs adhere to such guidelines.

(4) A State may count a recently arrived English learner as defined in section 1111(b)(3)(A) of the Act as a

participant in the State assessment in reading/language arts for purposes of meeting the requirements in paragraph (a) of this section if he or she takes either the State's English language proficiency assessment under section 1111(b)(2)(G) of the Act or reading/language arts assessment under section 1111(b)(2)(B)(v)(I) of the Act.

(Authority: 20 U.S.C. 6311(b)–(c); 20 U.S.C. 1221e–3)

■ 8. Section 200.16 is revised to read as follows:

**§ 200.16 Subgroups of students.**

(a) *In general.* In establishing long-term goals and measurements of interim progress under § 200.13, measuring performance on each indicator under § 200.14, annually meaningfully differentiating schools under § 200.18, and identifying schools under § 200.19, each State must include the following categories of students consistent with the State's minimum number of students under § 200.17(a)(1):

(1) All public school students.

(2) Each of the following subgroups of students, separately:

(i) Economically disadvantaged students.

(ii) Students from each major racial and ethnic group.

(iii) Children with disabilities, as defined in section 8101(4) of the Act.

(iv) English learners, as defined in section 8101(20) of the Act.

(b) *English learners.* (1) With respect to a student previously identified as an English learner who has achieved English language proficiency consistent with the standardized, statewide entrance and exit procedures in section 3111(b)(2)(A) of the Act—

(i) A State may include such a student's performance within the English learner subgroup under paragraph (a)(2)(iv) of this section for not more than four years after the student ceases to be identified as an English learner for purposes of calculating the Academic Achievement indicator if the State develops a uniform statewide procedure for doing so that includes all such students and includes them—

(A) For the same State-determined period of time; and

(B) In determining if a school meets the State's minimum number of students for the English learner subgroup under § 200.17(a)(1).

(ii) A State may not include such a student within the English learner subgroup under paragraph (a)(2)(iv) of this section for—

(A) Any purpose in the accountability system, except as described in paragraph (b)(1)(i) of this section; or

(B) Purposes of reporting information on State and LEA report cards under section 1111(h) of the Act, except for providing information on each school's level of performance on the Academic Achievement indicator consistent with § 200.18(b)(3).

(2) With respect to an English learner with a disability for whom there are no appropriate accommodations for one or more domains of the English language proficiency assessment required under section 1111(b)(2)(G) of the Act because the disability is directly related to that particular domain (e.g., a non-verbal English learner who cannot take the speaking portion of the assessment) as determined by the student's individualized education program (IEP) team or 504 team on an individualized basis, a State must, in measuring performance against the Progress in Achieving English Language Proficiency indicator, include such a student's performance on the English language proficiency assessment based on the remaining domains in which it is possible to assess the student.

(3) With respect to a recently arrived English learner as defined in section 1111(b)(3)(A) of the Act, a State must include such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) of the Act upon enrollment in a school in one of the 50 States or the District of Columbia (hereafter “a school in the United States”) in calculating long-term goals and measurements of interim progress under § 200.13(a), annually meaningfully differentiating schools under § 200.18, and identifying schools under § 200.19, except that the State may either—

(i)(A) Exempt such an English learner from the first administration of the reading/language arts assessment;

(B) Exclude such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) and 1111(b)(2)(G) of the Act in calculating the Academic Achievement and Progress in Achieving English Language Proficiency indicators in the first year of such an English learner's enrollment in a school in the United States; and

(C) Include such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) and 1111(b)(2)(G) of the Act in calculating the Academic Achievement and Progress in Achieving English Language Proficiency indicators in the second year of such an English learner's enrollment in a school in the United States and every year of enrollment thereafter; or

(ii)(A) Assess, and report the performance of, such an English learner on the assessments under section

1111(b)(2)(B)(v)(I) of the Act in each year of such an English learner's enrollment in a school in the United States;

(B) Exclude such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in calculating the Academic Achievement indicator in the first year of such an English learner's enrollment in a school in the United States;

(C) Include a measure of such an English learner's growth on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in calculating the Academic Progress indicator, in the case of an elementary or middle school, and the Academic Achievement indicator, in the case of a high school, in the second year of such an English learner's enrollment in a school in the United States; and

(D) Include a measure of such an English learner's proficiency on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in calculating the Academic Achievement indicator in the third year of such an English learner's enrollment in a school in the United States and every year of enrollment thereafter.

(4) A State may choose one of the exceptions described in paragraphs (b)(3)(i) or (ii) of this section for recently arrived English learners and must—

(i)(A) Apply the same exception to all recently arrived English learners in the State; or

(B) Develop and consistently implement a uniform statewide procedure for all recently arrived English learners that, in determining whether such an exception is appropriate for an English learner, considers the student's English language proficiency level and that may, at a State's discretion, consider one or more of the student characteristics under § 200.13(c)(2)(ii)(B) through (E); and

(ii) Report on State and LEA report cards under section 1111(h) of the Act the number and percentage of recently arrived English learners who are exempted from taking such assessments or whose results on such assessments are excluded from any indicator under § 200.14 on the basis of each exception described in paragraphs (b)(3)(i) and (ii) of this section.

(c) *State plan.* Each State must describe in its State plan under section 1111 of the Act how it has met the requirements of this section, including by describing any subgroups of students used in the accountability system in addition to those in paragraph (a)(2) of this section, its uniform procedure for including former English learners under paragraph (b)(1)(i) of this section, and

its uniform procedure for including recently arrived English learners under paragraph (b)(4) of this section, if applicable.

(Authority: 20 U.S.C. 6311(b)–(c), (h); 20 U.S.C. 1221e–3)

■ 9. Section 200.17 is revised to read as follows:

**§ 200.17 Disaggregation of data.**

(a) *Statistically sound and reliable information.* (1) Based on sound statistical methodology, each State must determine the minimum number of students sufficient to—

(i) Yield statistically reliable information for each purpose for which disaggregated data are used, including purposes of reporting information under section 1111(h) of the Act or for purposes of the statewide accountability system under section 1111(c) of the Act; and

(ii) Ensure that, to the maximum extent practicable, each student subgroup in § 200.16(a)(2) is included at the school level for annual meaningful differentiation and identification of schools under §§ 200.18 and 200.19.

(2) Such number—

(i) Must be the same number for all students and for each subgroup of students in the State described in § 200.16(a)(2);

(ii) Must be the same number for all purposes of the statewide accountability system under section 1111(c) of the Act, including measuring school performance for each indicator under § 200.14;

(iii) Must not exceed 30 students, unless the State provides a justification for doing so in its State plan under section 1111 of the Act consistent with paragraph (a)(3)(v) of this section; and

(iv) May be a lower number for purposes of reporting under section 1111(h) under the Act than for purposes of the statewide accountability system under section 1111(c) of the Act.

(3) A State must include in its State plan under section 1111 of the Act—

(i) A description of how the State's minimum number of students meets the requirements of paragraphs (a)(1) of this section;

(ii) An explanation of how other components of the statewide accountability system, such as the State's uniform procedure for averaging data under § 200.20(a), interact with the State's minimum number of students to affect the statistical reliability and soundness of accountability data and to ensure the maximum inclusion of all students and each student subgroup under § 200.16(a)(2);

(iii) A description of the strategies the State uses to protect the privacy of

individual students for each purpose for which disaggregated data is required, including reporting under section 1111(h) of the Act and the statewide accountability system under section 1111(c) of the Act, as required in paragraph (b) of this section;

(iv) Information regarding the number and percentage of all students and students in each subgroup described in § 200.16(a)(2) for whose results schools would not be held accountable in the State accountability system for annual meaningful differentiation under § 200.18; and

(v) If applicable, a justification, including data on the number and percentage of schools that would not be held accountable for the results of students in each subgroup under § 200.16(a)(2) in the accountability system, that explains how a minimum number of students exceeding 30 promotes sound, reliable accountability determinations.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.16(a) to report required information under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student, teacher, principal, or other school leader.

(2) To determine whether the collection and dissemination of disaggregated information would reveal personally identifiable information about an individual student, teacher, principal, or other school leader, a State must apply the requirements under section 444 of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (2) of this section may be construed to abrogate the responsibility of a State to implement the requirements of section 1111(c) of the Act to annually meaningfully differentiate among all public schools in the State on the basis of the performance of all students and each subgroup of students under section 1111(c)(2) of the Act on all indicators under section 1111(c)(4)(B) of the Act.

(4) Each State and LEA must implement appropriate strategies to protect the privacy of individual students in reporting information under section 1111(h) of the Act and in establishing annual meaningful differentiation of schools in its statewide accountability system under section 1111(c) of the Act on the basis of disaggregated subgroup information.

(c) *Inclusion of subgroups in assessments.* If a subgroup under § 200.16(a) is not of sufficient size to

produce statistically sound and reliable results, a State must still include students in that subgroup in its State assessments under section 1111(b)(2)(B)(i) of the Act.

(d) *Disaggregation at the LEA and State.* If the number of students in a subgroup is not statistically sound and reliable at the school level, a State must include those students in disaggregated information at each level for which the number of students is statistically sound and reliable (e.g., the LEA or State level).

(Authority: 20 U.S.C. 6311(c), (h); 20 U.S.C. 1221e–3)

■ 10. Section 200.18 is revised to read as follows:

**§ 200.18 Annual meaningful differentiation of school performance.**

(a) In its State plan under section 1111 of the Act each State must describe how its statewide accountability system under § 200.12 establishes a system for annual meaningful differentiation for all public schools.

(b) A State must define annual meaningful differentiation in a manner that—

(1) Includes the performance of all students and each subgroup of students in a school, consistent with §§ 200.16, 200.17, and 200.20(c), on each of the indicators described in § 200.14;

(2) Includes, for each indicator, at least three distinct levels of school performance that are consistent with attainment of the long-term goals and measurements of interim progress under § 200.13 and that are clear and understandable to the public;

(3) Provides information on a school's level of performance on each indicator described in § 200.14, separately, as part of the description of the State's system for annual meaningful differentiation on LEA report cards under § 200.32;

(4) Results in a single rating from among at least three distinct rating categories for each school, based on a school's level of performance on each indicator, to describe a school's summative performance as part of the description of the State's system for annual meaningful differentiation on LEA report cards under §§ 200.31 and 200.32;

(5) Meets the requirements of § 200.15 to annually measure the achievement of at least 95 percent of all students and 95 percent of all students in each subgroup of students on the assessments described in section 1111(b)(2)(B)(v)(I) of the Act; and

(6) Informs the State's methodology described in § 200.19 for identifying schools for comprehensive support and

improvement and for targeted support and improvement.

(c) In providing annual meaningful differentiation among all public schools in the State, including providing a single summative rating for each school, a State must—

(1) Afford substantial weight to each of the following indicators, as applicable, under § 200.14—

- (i) Academic Achievement indicator.
- (ii) Academic Progress indicator.
- (iii) Graduation Rate indicator.
- (iv) Progress in Achieving English Language Proficiency indicator;

(2) Afford, in the aggregate, much greater weight to the indicators in paragraph (c)(1) of this section than to the indicator or indicators of School Quality or Student Success under § 200.14(b)(5), in the aggregate; and

(3) Within each grade span, afford the same relative weight to each indicator among all schools consistent with paragraph (e)(3) of this section.

(d) To show that its system of annual meaningful differentiation meets the requirements of paragraph (c) of this section, a State must—

(1) Demonstrate that performance on the indicator or indicators of School Quality or Student Success may not be used to change the identity of schools that would otherwise be identified for comprehensive support and improvement under § 200.19(a) unless such a school is also making significant progress, for all students consistent with § 200.16(a)(1), on at least one of the indicators described in paragraph (c)(1)(i) through (iii) of this section;

(2) Demonstrate that performance on the indicator or indicators of School Quality or Student Success may not be used to change the identity of schools that would otherwise be identified for targeted support and improvement under § 200.19(b), unless such a school is also making significant progress, for each consistently underperforming or low-performing subgroup of students, on at least one of the indicators described in paragraph (c)(1) of this section; and

(3) Demonstrate, based on the performance of all students and each subgroup of students, that a school performing in the lowest performance level under paragraph (b)(2) of this section on any of the indicators described in paragraph (c)(1) of this section receives a different summative rating than a school performing in the highest performance level on all indicators under § 200.14; and

(e)(1) A State must demonstrate in its State plan under section 1111 of the Act how it has met the requirements of paragraphs (c) and (d) of this section,

including a description of how a State calculates the performance levels on each indicator and a summative rating for each school.

(2) In meeting the requirement in paragraph (c)(1) of this section to afford substantial weight to certain indicators, a State is not required to afford each such indicator the same substantial weight.

(3) If a school does not meet the State's minimum number of students under § 200.17(a)(1) for the English learner subgroup, a State must—

(i) Exclude the Progress in Achieving English Language Proficiency indicator from the annual meaningful differentiation for such a school under paragraph (b) of this section; and

(ii) Afford the Academic Achievement, Academic Progress, Graduation Rate, and School Quality or Student Success indicators the same relative weights in such a school as are afforded to such indicators in a school that meets the State's minimum number of students for the English learner subgroup.

(Authority: 20 U.S.C. 6311(c), (h); 20 U.S.C. 1221e–3)

■ 11. Section 200.19 is revised to read as follows:

#### § 200.19 Identification of schools.

(a) *Schools identified for comprehensive support and improvement.* Based on its system for annual meaningful differentiation under § 200.18, each State must establish and describe in its State plan under section 1111 of the Act a methodology to identify one statewide category of schools for comprehensive support and improvement under § 200.21, which must include, at a minimum, the following three types of schools:

(1) *Lowest-performing.* The lowest-performing five percent of elementary, middle, and high schools in the State participating under subpart A of this part, based on each school's summative rating among all students and consistent with the requirements of § 200.18(c), over no more than three years consistent with § 200.20(a).

(2) *Low high school graduation rate.* Any public high school in the State with a four-year adjusted cohort graduation rate, as calculated under § 200.34(a), below 67 percent, or below a higher percentage selected by the State, over no more than three years consistent with § 200.20(a).

(3) *Chronically low-performing subgroup.* Any school participating under subpart A of this part and identified pursuant to paragraph (b)(2) of this section that has not improved, as

defined by the State, after implementing a targeted support and improvement plan over no more than three years consistent with paragraph (d)(1)(i) of this section.

(b) *Schools identified for targeted support and improvement.* Based on its system for annual meaningful differentiation under § 200.18, each State must establish and describe in its State plan under section 1111 of the Act a methodology to identify schools for targeted support and improvement under § 200.22, which must include, at a minimum, the following two types of schools:

(1) *Consistently underperforming subgroup.* Any school with one or more consistently underperforming subgroups of students, as defined in paragraph (c) of this section and consistent with §§ 200.16 and 200.17, including at the State's discretion, any school identified due to assessment participation rates under § 200.15(b)(2)(iii) consistent with § 200.24(a)(1).

(2) *Low-performing subgroup receiving additional targeted support.* Any school in which one or more subgroups of students is performing at or below the summative level of performance of all students in any school identified under paragraph (a)(1) of this section.

(c) *Methodology to identify consistently underperforming subgroups.* The State's methodology to identify schools with one or more consistently underperforming subgroups of students under paragraph (b)(1) of this section must—

(1) Consider each school's performance among each subgroup of students in the school consistent with §§ 200.16 and 200.17, over no more than two years consistent with § 200.20(a);

(2) Take into account the indicators under § 200.14 used for annual meaningful differentiation under § 200.18 consistent with the requirements for weighting of indicators described in § 200.18(c); and

(3) Define a consistently underperforming subgroup of students in a uniform manner across all LEAs in the State, which must include one or more of the following:

(i) A subgroup of students that is not meeting the State's measurements of interim progress or is not on track to meet the State-designed long-term goals under § 200.13.

(ii) A subgroup of students that is performing at the lowest performance level under § 200.18(b)(3) in the system of annual meaningful differentiation on at least one indicator under § 200.14, or is particularly low performing on a measure within an indicator (e.g.,

student proficiency on the State mathematics assessments).

(iii) A subgroup of students that is performing at or below a State-determined threshold as compared to the average performance among all students, or the highest-performing subgroup of students, in the State.

(iv) A subgroup of students that is performing significantly below the average performance among all students, or the highest-performing subgroup, in the State, such that the performance gap is among the largest in the State.

(v) Another definition that the State demonstrates in its State plan meets the requirements of paragraphs (c)(1) and (2) of this section.

(d) *Timeline.* (1)(i) A State must identify each type of school for comprehensive support and improvement under paragraphs (a)(1) through (3) of this section at least once every three years, beginning with identification for the 2017–2018 school year, except that identification of schools with chronically low-performing subgroups under paragraph (a)(3) of this section is not required for the 2017–2018 school year.

(ii) A State must identify schools with one or more consistently underperforming subgroups of students for targeted support and improvement under paragraph (b) of this section annually, beginning with identification for the 2018–2019 school year.

(iii) A State must identify schools with one or more low-performing subgroups of students for targeted support and improvement under paragraph (b)(2) of this section at least once every three years, with such identification occurring in each year, consistent with paragraph (d)(1)(i) of this section, that the State identifies schools under for comprehensive support and improvement, beginning with identification for the 2017–2018 school year.

(2) A State must identify schools for comprehensive and targeted support and improvement by the beginning of each school year, with the year of identification defined as the school year immediately following the most recent school year in which the State measured the school's performance on the indicators under § 200.14 that resulted in the school's identification (*e.g.*, data from the 2016–2017 school year inform identification for the 2017–2018 school year).

(Authority: 20 U.S.C. 6311(c) and (d); 20 U.S.C. 1221e–3)

■ 12. Section § 200.20 is revised to read as follows:

**§ 200.20 Data procedures for annual meaningful differentiation and identification of schools.**

(a) *Averaging data.* For the purposes of meeting the requirements for annual meaningful differentiation under § 200.18 and identification of schools under § 200.19, a State may establish a uniform procedure that includes one or both of the following:

(1) *Averaging data across school years.* (i) A State may average data across up to three school years.

(ii) If a State averages data across school years for these purposes, the State must—

(A) Use the same uniform procedure for averaging data from the school year for which the identification is made with data from one or two school years immediately preceding that school year for all public schools;

(B) Report data for a single school year, without averaging, on report cards under section 1111(h) of the Act; and

(C) Explain its uniform procedure for averaging data in its State plan under section 1111 of the Act and specify that such procedure is used in its description of the indicators used for annual meaningful differentiation on the State report card pursuant to section 1111(h)(1)(C)(i)(III) of the Act.

(2) *Combining data across grades.* (i) A State may combine data across grades in a school.

(ii) If a State combines data across grades for these purposes, the State must—

(A) Use the same uniform procedure for combining data for all public schools;

(B) Report data for each grade in the school on report cards under section 1111(h) of the Act; and

(C) Explain its uniform procedure for combining data in its State plan under section 1111 of the Act, and specify that such procedure is used in its description of the indicators used for annual meaningful differentiation in its accountability system on the State report card pursuant to section 1111(h)(1)(C)(i)(III) of the Act.

(b) *Partial enrollment.* (1) In calculating school performance on each of the indicators for the purposes of annual meaningful differentiation under § 200.18 and identification of schools under § 200.19, a State must include all students who were enrolled in the same school within an LEA for at least half of the academic year.

(2) A State may not use the performance of a student who has been enrolled in the same school within an LEA for less than half of the academic year in its system of annual meaningful

differentiation and identification of schools, except that—

(i) An LEA must include such student in calculating the Graduation Rate indicator under § 200.14(b)(3), if applicable;

(ii) If such student exited a high school without receiving a regular high school diploma and without transferring to another high school that grants a regular high school diploma during such school year, the LEA must assign such student, for purposes of calculating the Graduation Rate indicator and consistent with the approach established by the State under § 200.34(f), to either—

(A) The high school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(B) The high school in which the student was most recently enrolled; and

(iii) All students, regardless of their length of enrollment in a school within an LEA during the academic year, must be included for purposes of reporting on the State and LEA report cards under section 1111(h) of the Act for such school year.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 1221e–3)

■ 13. Section 200.21 is revised to read as follows:

**§ 200.21 Comprehensive support and improvement.**

(a) *In general.* A State must notify each LEA in the State that serves one or more schools identified for comprehensive support and improvement under § 200.19(a) of such identification no later than the beginning of the school year for which such school is identified.

(b) *Notice.* Upon receiving the notification from the State under paragraph (a) of this section, an LEA must promptly notify the parents of each student enrolled in the school of the school's identification for comprehensive support and improvement, including, at a minimum, the reason or reasons for the identification under § 200.19(a) (*e.g.*, low performance of all students, low graduation rate, chronically low-performing subgroup), and an explanation of how parents can become involved in the needs assessment under paragraph (c) of this section and in developing and implementing the comprehensive support and improvement plan described in paragraph (d) of this section. Such notice must—

(1) Be in an understandable and uniform format;



(2) Be, to the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(3) Be, upon request by a parent or guardian who is an individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12102, provided in an alternative format accessible to that parent.

(c) *Needs assessment.* For each identified school, an LEA must conduct, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a comprehensive needs assessment that examines, at a minimum—

(1) Academic achievement data on each of the assessments required under section 1111(b)(2)(B)(v) of the Act for all students in the school, including for each subgroup of students described in § 200.16(a)(2);

(2) The school's performance, including among subgroups of students described in § 200.16(a)(2), on the indicators and long-term goals and measurements of interim progress described in §§ 200.13 and 200.14;

(3) The reason or reasons the school was identified for comprehensive support and improvement under § 200.19(a); and

(4) At the LEA's discretion, the school's performance on additional, locally selected indicators that are not included in the State's system of annual meaningful differentiation under § 200.18 and that affect student outcomes in the identified school.

(d) *Comprehensive support and improvement plan.* Each LEA must, with respect to each school identified by the State for comprehensive support and improvement, develop and implement a comprehensive support and improvement plan for the school to improve student outcomes that—

(1) Is developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents), as demonstrated, at a minimum, by describing in the plan how—

(i) Early stakeholder input was solicited and taken into account in the development of the plan, including the changes made as a result of such input; and

(ii) Stakeholders will participate in an ongoing manner in the plan's implementation;

(2) Includes and is based on the results of the needs assessment described in paragraph (c) of this section;

(3) Includes one or more interventions (e.g., increasing access to effective teachers or adopting incentives to recruit and retain effective teachers; increasing or redesigning instructional time; interventions based on data from early warning indicator systems; reorganizing the school to implement a new instructional model; strategies designed to increase diversity by attracting and retaining students from varying socioeconomic backgrounds; replacing school leadership; in the case of an elementary school, increasing access to high-quality preschool; converting the school to a public charter school; changing school governance; closing the school; and, in the case of a public charter school, revoking or non-renewing the school's charter by its authorized public chartering agency consistent with State charter school law) to improve student outcomes in the school that—

(i) Meet the definition of "evidence-based" under section 8101(21) of the Act;

(ii) Are supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served;

(iii) Are supported, to the extent practicable, by the strongest level of evidence that is available and appropriate to meet the needs identified in the needs assessment under paragraph (c) of this section; and

(iv) May be selected from among any State-established evidence-based interventions or a State-approved list of evidence-based interventions, consistent with State law and § 200.23(c)(2) and (3);

(4) Identifies and addresses resource inequities, by—

(i) Including a review of LEA and school-level resources among schools and, as applicable, within schools with respect to—

(A) Disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA consistent with sections 1111(g)(1)(B) and 1112(b)(2) of the Act; and

(B) Per-pupil expenditures of Federal, State, and local funds required to be reported annually consistent with section 1111(h)(1)(C)(x) of the Act; and

(ii) Including, at the LEA's discretion, a review of LEA- and school-level budgeting and resource allocation with respect to resources described in paragraph (d)(4)(i) of this section and the availability and access to any other resource provided by the LEA or school, such as—

(A) Advanced coursework;

(B) Preschool programs; and  
(C) Instructional materials and technology;

(5) Must be fully implemented in the school year for which such school is identified, except that an LEA may have a planning year during which the LEA must carry out the needs assessment required under paragraph (c) of this section and develop the comprehensive support and improvement plan to prepare for successful implementation of interventions required under the plan on, at the latest, the first full day of the school year following the school year for which the school was identified;

(6) Must be made publicly available by the LEA, including to parents consistent with the requirements under paragraphs (b)(1) through (3) of this section; and

(7) Must be approved by the school identified for comprehensive support and improvement, the LEA, and the State.

(e) *Plan approval and monitoring.* The State must, upon receipt from an LEA of a comprehensive support and improvement plan under paragraph (d) of this section—

(1) Review such plan against the requirements of this section and approve the plan in a timely manner, as determined by the State, taking all actions necessary to ensure that the school and LEA are able to meet all of the requirements of paragraphs (a) through (d) of this section to develop and implement the plan within the required timeframe; and

(2) Monitor and periodically review each LEA's implementation of such plan.

(f) *Exit criteria.* (1) To ensure continued progress to improve student academic achievement and school success, the State must establish uniform statewide exit criteria for each school implementing a comprehensive support and improvement plan under this section. Such exit criteria must, at a minimum, require that the school—

(i) Improve student outcomes; and

(ii) No longer meet the criteria for identification under § 200.19(a) within a State-determined number of years (not to exceed four years).

(2) If a school does not meet the exit criteria established under paragraph (f)(1) of this section within the State-determined number of years, the State must, at a minimum, require the LEA to conduct a new comprehensive needs assessment that meets the requirements under paragraph (c) of this section.

(3) Based on the results of the new needs assessment, the LEA must, with respect to each school that does not meet the exit criteria, amend its

comprehensive support and improvement plan described in paragraph (d) of this section, in partnership with stakeholders consistent with the requirements in paragraph (d)(1) of this section, to—

(i) Address the reasons the school did not meet the exit criteria, including whether the school implemented the interventions with fidelity and sufficient intensity, and the results of the new needs assessment;

(ii) Update how it will continue to address previously identified resource inequities and to identify and address any newly identified resource inequities consistent with the requirements in paragraph (d)(4) of this section; and

(iii) Include implementation of additional interventions in the school that may address school-level operations (which may include staffing, budgeting, and changes to the school day and year) and that must—

(A) Be determined by the State, which may include requiring an intervention from among any State-established evidence-based interventions or a State-approved list of evidence-based interventions, consistent with State law and § 200.23(c)(2) and (3);

(B) Be more rigorous such that one or more evidence-based interventions in the plan are supported by strong or moderate evidence, consistent with section 8101(21)(A) of the Act; and

(C) Be supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served.

(4) Each LEA must—

(i) Make the amended comprehensive support and improvement plan described in paragraph (f)(3) of this section publicly available, including to parents consistent with paragraphs (b)(1) through (3) of this section; and

(ii) Submit the amended plan to the State in a timely manner, as determined by the State.

(5) After the LEA submits the amended plan to the State, the State must—

(i) Review and approve the amended plan, and any additional amendments to the plan, consistent with the review process required under paragraph (e)(1) of this section; and

(ii) Increase its monitoring, support, and periodic review of each LEA's implementation of such plan.

(g) *State discretion for certain high schools.* With respect to any high school in the State identified for comprehensive support and improvement under § 200.19(a)(2), the State may—

(1) Permit differentiated improvement activities consistent with paragraph (d)(3) of this section as part of the comprehensive support and improvement plan, including in schools that predominantly serve students—

(i) Returning to education after having exited secondary school without a regular high school diploma; or

(ii) Who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements, as established by the State; and

(2) In the case of such a school that has a total enrollment of less than 100 students, permit the LEA to forego implementation of improvement activities required under this section.

(h) *Public school choice.* Consistent with section 1111(d)(1)(D) of the Act, an LEA may provide all students enrolled in a school identified by the State for comprehensive support and improvement under § 200.19(a) with the option to transfer to another public school that is served by the LEA and that is not identified for comprehensive support and improvement under § 200.19(a), unless such an option is prohibited by State law or inconsistent with a Federal desegregation order, in which case the LEA must petition and obtain court approval for such transfers.

(Authority: 20 U.S.C. 6311(d); 20 U.S.C. 1221e-3)

■ 14. Section 200.22 is revised to read as follows:

**§ 200.22 Targeted support and improvement.**

(a) *In general.* With respect to each school that the State identifies under § 200.19(b) as a school requiring targeted support and improvement, each State must—

(1) Notify, no later than the beginning of the school year for which such school is identified, each LEA serving such school of the identification; and

(2) Ensure such LEA provides notification to each school identified for targeted support and improvement, including the reason for identification (*i.e.*, the subgroup or subgroups under § 200.16(a)(2) that are identified as consistently underperforming under § 200.19(b)(1), including, at the State's discretion, the subgroup or subgroups that are identified under § 200.15(b)(2)(iii), or the subgroup or subgroups that are low-performing under § 200.19(b)(2)), no later than the beginning of the school year for which such school is identified.

(b) *Notice.* (1) Upon receiving the notification from the State under paragraph (a)(1) of this section, the LEA

must promptly notify the parents of each student enrolled in the school of the school's identification for targeted support and improvement, consistent with the requirements under § 200.21(b)(1) through (3).

(2) The notice must include—

(i) The reason or reasons for the identification under § 200.19(b) (*i.e.*, which subgroup or subgroups are consistently underperforming under § 200.19(b)(1), including any subgroup or subgroups identified under § 200.15(b)(2)(iii) if the State chooses to require such schools to implement targeted support and improvement plans, or which subgroup or subgroups are low-performing under § 200.19(b)(2)); and

(ii) An explanation of how parents can become involved in developing and implementing the targeted support and improvement plan described in paragraph (c) of this section.

(c) *Targeted support and improvement plan.* Upon receiving the notification from the LEA under paragraph (a)(2) of this section, each school must develop and implement a school-level targeted support and improvement plan to address the reason or reasons for identification and improve student outcomes for the lowest-performing students in the school that—

(1) Is developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents) as demonstrated by, at a minimum, describing in the plan how—

(i) Early stakeholder input was solicited and taken into account in the development of each component of the plan, including the changes made as a result of such input; and

(ii) Stakeholders will have an opportunity to participate in an ongoing manner in such plan's implementation;

(2) Is designed to improve student performance for the lowest-performing students on each of the indicators under § 200.14 that led to the identification of the school for targeted support and improvement or, in the case of schools implementing targeted support and improvement plans consistent with § 200.15(b)(2)(iii), to improve student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act;

(3) Takes into consideration—

(i) The school's performance on the indicators and long-term goals and measurements of interim progress described in §§ 200.13 and 200.14, including student academic achievement on each of the assessments required under section 1111(b)(2)(B)(v) of the Act; and

(ii) At the school's discretion, the school's performance on additional, locally selected indicators that are not included in the State's system of annual meaningful differentiation under § 200.18 and that affect student outcomes in the identified school;

(4) Includes one or more interventions to address the reason or reasons for identification and improve student outcomes for the lowest-performing students in the school that—

(i) Meet the definition of "evidence-based" under section 8101(21) of the Act;

(ii) Are supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served;

(iii) May be selected from among a State-approved list of evidence-based interventions, consistent with § 200.23(c)(2); and

(iv) Are supported, to the extent practicable, by the strongest level of evidence that is available and appropriate to improve student outcomes for the lowest-performing students in the school;

(5) Must be fully implemented in the school year for which such school is identified, except that a school identified under § 200.19(b)(2) or (c) may have a planning year during which the school must develop the targeted support and improvement plan and complete other activities necessary to prepare for successful implementation of interventions required under the plan on, at the latest, the first full day of the school year following the school year for which the school was identified;

(6) Is submitted to the LEA for approval, pursuant to paragraph (d) of this section;

(7) In the case of a school with low-performing subgroups as described in § 200.19(b)(2), identifies and addresses resource inequities and their effect on each low-performing subgroup in the school by—

(i) Including a review of LEA and school-level resources among schools and, as applicable, within schools with respect to—

(A) Disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA consistent with sections 1111(g)(1)(B) and 1112(b)(2) of the Act; and

(B) Per-pupil expenditures of Federal, State, and local funds required to be reported annually consistent with section 1111(h)(1)(C)(x) of the Act; and

(ii) Including, at the school's discretion, a review of LEA and school-level budgeting and resource allocation

with respect to resources described in paragraph (c)(7)(i) of this section and the availability and access to any other resource provided by the LEA or school, such as—

- (A) Advanced coursework;
- (B) Preschool programs; and
- (C) Instructional materials and technology; and

(8) For any school operating a schoolwide program under section 1114 of the Act, addresses the needs identified by the needs assessment required under section 1114(b)(6) of the Act.

(d) *Plan approval and monitoring.*

The LEA must, upon receipt of a targeted support and improvement plan under paragraph (c) of this section from a school—

(1) Review each plan against the requirements of this section and approve such plan in a timely manner, taking all actions necessary to ensure that each school is able to meet all of the requirements under paragraphs (a) through (c) of this section within the required timeframe;

(2) Make the approved plan, and any amendments to the plan, publicly available, including to parents consistent with the requirements under § 200.21(b)(1) through (3); and

(3) Monitor the school's implementation of the plan.

(e) *Exit criteria.* Except with respect to schools described in paragraph (f) of this section, the LEA must establish and make publicly available, including to parents consistent with the requirements under § 200.21(b)(1) through (3), uniform exit criteria for schools identified by the State under § 200.19(b)(1) and use such criteria to make one of the following determinations with respect to each such school after a number of years as determined by the LEA:

(1) The school has successfully implemented its targeted support and improvement plan such that it no longer meets the criteria for identification and has improved student outcomes for its lowest-performing students, including each subgroup of students that was identified as consistently underperforming under § 200.19(c), or, in the case of a school implementing a targeted support and improvement plan consistent with § 200.15(b)(2)(iii), has met the requirement under § 200.15(a) for student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act, and may exit targeted support and improvement status.

(2) The school has unsuccessfully implemented its targeted support and improvement plan such that it has not

improved student outcomes for its lowest-performing students, including each subgroup of students that was identified as consistently underperforming under § 200.19(c), or, in the case of a school implementing a targeted support and improvement plan consistent with § 200.15(b)(2)(iii), has failed to meet the requirement under § 200.15(a) for student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act, in which case the LEA must subsequently—

(i) Require the school to amend its targeted support and improvement plan to include additional actions that continue to meet all requirements under paragraph (c) of this section and address the reasons the school did not meet the exit criteria, and encourage interventions that either meet a higher level of evidence under paragraph (c)(4) of this section than the interventions included in the school's original plan or increase the intensity of effective interventions in the school's original plan;

(ii) Review and approve the school's amended plan consistent with the review process required under paragraph (d)(1) of this section; and

(iii) Increase its monitoring and support of such school's implementation of the plan.

(f) *Special rule for schools with low-performing subgroups.* (1) With respect to any school participating under subpart A of this part that has one or more low-performing subgroups as described in § 200.19(b)(2), the State must establish uniform statewide exit criteria that, at a minimum, ensure each such school—

(i) Improves student outcomes for its lowest-performing students, including each subgroup identified as low-performing under § 200.19(b)(2); and

(ii) No longer meets the criteria for identification under § 200.19(b)(2).

(2) If a school does not satisfy the exit criteria established under paragraph (f)(1) of this section, the State must identify the school for comprehensive support and improvement under § 200.19(a)(3), consistent with the requirement under § 200.19(d)(1)(i) for States to identify such schools at least once every three years.

(Authority: 20 U.S.C. 6311(d); 20 U.S.C. 1221e–3)

■ 15. Add § 200.23 to read as follows:

**§ 200.23 State responsibilities to support continued improvement.**

(a) *State support.* Each State must, with respect to each LEA in the State serving a significant number of schools identified for comprehensive support

and improvement under § 200.19(a) and each LEA in the State serving a significant number of schools identified for targeted support and improvement under § 200.19(b), periodically review resource allocation between LEAs and between schools, consider any inequities identified under §§ 200.21(d)(4) and 200.22(c)(7), and, to the extent practicable, address any identified inequities in resources.

(b) *State technical assistance.* Each State must include in its State plan under section 1111 of the Act a description of technical assistance it will provide to each LEA in the State serving a significant number of schools identified for comprehensive or targeted support and improvement, including, at a minimum, a description of how it will provide technical assistance to LEAs to ensure the effective implementation of evidence-based interventions and support and increase their capacity to successfully—

(1) Develop and implement comprehensive support and improvement plans that meet the requirements of § 200.21;

(2) Ensure schools develop and implement targeted support and improvement plans that meet the requirements of § 200.22; and

(3) Develop or use tools related to—

(i) Conducting a school-level needs assessment consistent with § 200.21(c);

(ii) Selecting evidence-based interventions consistent with §§ 200.21(d)(3) and 200.22(c)(4); and

(iii) Reviewing resource allocation and identifying strategies for addressing any identified resource inequities consistent with §§ 200.21(d)(4) and 200.22(c)(7).

(c) *Additional improvement actions.* The State may—

(1) Take action to initiate additional improvement in any LEA, or in any authorized public chartering agency consistent with State charter school law, with a significant number of schools that are consistently identified for comprehensive support and improvement under § 200.19(a) and are not meeting exit criteria established under § 200.21(f) or a significant number of schools identified for targeted support and improvement under § 200.19(b), including school-level actions such as reorganizing a school to implement a new instructional model; replacing school leadership; converting a school to a public charter school; changing school governance; closing a school; or, in the case of a public charter school, revoking or non-renewing the school's charter consistent with State charter school law;

(2) Establish an exhaustive or non-exhaustive list of State-approved, evidence-based interventions consistent with the definition of evidenced-based under section 8101(21) of the Act for use in schools implementing comprehensive or targeted support and improvement plans under §§ 200.21 and 200.22;

(3) Consistent with State law, establish evidence-based State-determined interventions consistent with the definition of “evidenced-based” under section 8101(21) of the Act that can be used by LEAs in a school identified for comprehensive support and improvement under § 200.19(a), which may include whole-school reform models; and

(4) Request that LEAs submit to the State for review and approval, in a timely manner, the amended targeted support and improvement plan for each school in the LEA described in § 200.22(e)(2) prior to the approval of such plan by the LEA.

(Authority: 20 U.S.C. 6311(d); 20 U.S.C. 1221e-3)

■ 16. Add § 200.24 to read as follows:

**§ 200.24 Resources to support continued improvement.**

(a) *In general.* (1) A State must allocate school improvement funds that it reserves under section 1003(a) of the Act to LEAs to serve schools implementing comprehensive or targeted support and improvement plans under §§ 200.21 and 200.22, except that such funds may not be used to serve schools implementing targeted support and improvement plans consistent with § 200.15(b)(2)(iii).

(2) An LEA may apply for school improvement funds if—

(i) It has one or more schools identified for comprehensive support and improvement under § 200.19(a) or targeted support and improvement under § 200.19(b); and

(ii) It applies to serve each school in the LEA identified for comprehensive support and improvement that it has sufficient capacity to serve before applying to serve any school in the LEA identified for targeted support and improvement.

(b) *LEA application.* To receive school improvement funds under paragraph (a) of this section, an LEA must submit an application to the State to serve one or more schools identified for comprehensive or targeted support and improvement. In addition to any other information that the State may require, such an application must include each of the following:

(1) A description of one or more evidence-based interventions that are

based on strong, moderate, or promising evidence under section 8101(21)(A) of the Act and that will be implemented in each school the LEA proposes to serve.

(2) A description of how the LEA will carry out its responsibilities under §§ 200.21 and 200.22 for schools it will serve with funds under this section, including how the LEA will—

(i) Develop and implement a comprehensive support and improvement plan that meets the requirements of § 200.21 for each school identified under § 200.19(a), for which the LEA receives school improvement funds to serve; and

(ii) Support each school identified under § 200.19(b), for which the LEA receives school improvement funds to serve, in developing and implementing a targeted support and improvement plan that meets the requirements of § 200.22.

(3) A budget indicating how it will allocate school improvement funds among schools identified for comprehensive and targeted support and improvement that it commits to serve.

(4) The LEA's plan to monitor schools for which the LEA receives school improvement funds, including the LEA's plan to increase monitoring of a school that does not meet the exit criteria consistent with § 200.21(f) or § 200.22(e) and (f).

(5) A description of the rigorous review process the LEA will use to recruit, screen, select, and evaluate any external partners with which the LEA will partner in carrying out activities supported with school improvement funds.

(6) A description of how the LEA will align other Federal, State, and local resources to carry out the activities supported with school improvement funds, and sustain effective activities in schools after funding under this section is complete.

(7) As appropriate, a description of how the LEA will modify practices and policies to provide operational flexibility, including with respect to school budgeting and staffing, that enables full and effective implementation of comprehensive targeted support and improvement plans.

(8) For any LEA that plans to use the first year of its school improvement funds for planning activities in a school that it will serve, a description of the activities that will be supported with school improvement funds, the timeline for implementing those activities, how such timeline will ensure full implementation of the comprehensive or targeted support and improvement

plan consistent with §§ 200.21(d)(5) and 200.22(c)(5), and how those activities will support successful implementation of comprehensive or targeted support and improvement plans.

(9) An assurance that each school the LEA proposes to serve will receive all of the State and local funds it would have received in the absence of funds received under this section.

(c) *Allocation of school improvement funds to LEAs.* (1) A State must review, in a timely manner, an LEA application for school improvement funds that meets the requirements of this section.

(2) In awarding school improvement funds under this section, a State must—

(i) Award the funds on a competitive or formula basis;

(ii) Make each award of sufficient size, with a minimum award of \$500,000 per year for each school identified for comprehensive support and improvement to be served and a minimum award of \$50,000 per year for each school identified for targeted support and improvement to be served, to enable the LEA to effectively implement all requirements of a support and improvement plan under § 200.21 or § 200.22, as applicable, including selected evidence-based interventions, except that a State may determine that an award of less than the minimum award amount is appropriate if the LEA demonstrates, in its application, that such lesser amount will be sufficient to support effective implementation of such plan; and

(iii) Make awards not to exceed four years, which may include a planning year consistent with paragraph (b)(7) of this section during which the LEA must plan to carry out activities that will be supported with school improvement funds by, at the latest, the beginning of the school year following the school year for which the school was identified, and that will support the successful implementation of interventions required under §§ 200.21 and 200.22, as applicable.

(3) If a State permits an LEA to have a planning year for a school under paragraph (c)(2)(iii) of this section, prior to renewing the LEA's school improvement award with respect to such school, the State must review the performance of the LEA in supporting such school during the planning year against the LEA's approved application and determine that the LEA will be able to ensure such school fully implements the activities and interventions that will be supported with school improvement funds by the beginning of the school year following the planning year.

(4) If a State has insufficient school improvement funds to award a grant of

sufficient size to each LEA that submits an approvable application consistent with paragraph (c)(1) of this section, the State must, whether awarding funds through a formula or competition—

(i) Award funds to an LEA applying to serve a school identified for comprehensive support and improvement before awarding funds to an LEA applying to serve a school identified for targeted support and improvement;

(ii) Give priority in funding to an LEA that demonstrates the greatest need for such funds, as determined by the State, and based, at a minimum, on—

(A) The number or percentage of elementary and secondary schools in the LEA implementing plans under §§ 200.21 and 200.22;

(B) The State's review of resource allocation among and within LEAs under § 200.23(a); and

(C) Current academic achievement and student outcomes in the school or schools the LEA is proposing to serve.

(iii) Give priority in funding to an LEA that demonstrates the strongest commitment to use such funds to enable the lowest-performing schools to improve academic achievement and student outcomes, taking into consideration, with respect to the school or schools to be served—

(A) The proposed use of evidence-based interventions that are supported by the strongest level of evidence available; and

(B) Commitment to family and community engagement.

(iv) Take into consideration geographic diversity within the State.

(d) *State responsibilities.* (1) Each State must—

(i) Establish the method described in paragraph (c) of this section that the State will use to allocate school improvement funds to LEAs;

(ii) Monitor the use of funds by LEAs receiving school improvement funds;

(iii) Evaluate the use of school improvement funds by LEAs receiving such funds including by, at a minimum—

(A) Engaging in ongoing efforts to analyze the impact of the evidence-based interventions implemented using funds allocated under this section on student outcomes or other relevant outcomes; and

(B) Disseminating on a regular basis the State's findings on effectiveness of the evidence-based interventions to LEAs with schools identified under § 200.19;

(iv) Prior to renewing an LEA's award of school improvement funds with respect to a particular school each year and consistent with paragraph (c)(2)(ii) of this section, determine that—

(A) The school is making progress on the State's long-term goals and measurements of interim progress and accountability indicators under §§ 200.13 and 200.14; and

(B) The school is implementing evidence-based interventions with fidelity to the LEA's application and the requirements under §§ 200.21 and 200.22, as applicable; and

(v) As appropriate, reduce barriers and provide operational flexibility for each school in an LEA receiving funds under this section, including flexibility around school budgeting and staffing.

(2) A State may—

(i) Set aside up to five percent of the school improvement funds the State reserves under section 1003(a) of the Act to carry out the activities under paragraph (d)(1) of this section; and

(ii) Directly provide for school improvement activities funded under this section or arrange for their provision in a school through external partners such as school support teams, educational service agencies, or nonprofit or for-profit entities with expertise and a record of success in implementing evidence-based strategies to improve student achievement, instruction, and schools if the State has the authority under State law to take over the school or, if the State does not have such authority, with LEA approval with respect to each such school, and—

(A) The State undertakes a rigorous review process in recruiting, screening, selecting, and evaluating any external partner the State uses to carry out activities directly with school improvement funds; and

(B) The external provider has demonstrated success implementing the evidence-based intervention or interventions that are based on strong, moderate, or promising evidence consistent with section 8101(21)(A) of the Act that it will implement.

(e) *Reporting.* The State must include on its State report card required under section 1111(h)(1) of the Act a list of all LEAs, and schools served by such LEAs, that received funds under this section, including the amount of funds each LEA received to serve each such school and the types of interventions implemented in each such school with the funds.

(Authority: 20 U.S.C. 6303; 20 U.S.C. 6311(d); 20 U.S.C. 1221e-3)

■ 17. Revise the undesignated center heading following § 200.29 to read as follows:

#### **State and LEA Report Cards**

■ 18. Section 200.30 is revised to read as follows:

**§ 200.30 Annual State report card.**

(a) *State report cards in general.* (1) A State that receives funds under subpart A of this part must prepare and disseminate widely to the public, consistent with paragraph (d) of this section, an annual State report card for the State as a whole that meets the requirements of this section.

(2) Each State report card must include, at a minimum—

(i) The information required under section 1111(h)(1)(C) of the Act;

(ii) As applicable, for each authorized public chartering agency in the State—

(A) How the percentage of students in each subgroup defined in section 1111(c)(2) of the Act for each charter school authorized by such agency compares to such percentage for the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State; and

(B) How academic achievement under § 200.30(b)(2)(i)(A) for students in each charter school authorized by such agency compares to that for students in the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State; and

(iii) Any additional information that the State believes will best provide parents, students, and other members of the public with information regarding the progress of each of the State's public elementary schools and secondary schools, which may include the number and percentage of students requiring remediation in postsecondary education and the number and percentage of students attaining career and technical proficiencies.

(b) *Format.* (1) The State report card must be concise and presented in an understandable and uniform format that is developed in consultation with parents. Additionally, a State may choose to meet its cross-tabulation requirements under section 1111(g) of the Act through its State report cards.

(2) The State report card must begin with a clearly labeled overview section that is prominently displayed and includes the following statewide information for the most recent school year:

(i) For all students and disaggregated, at a minimum, for each subgroup of students under § 200.16(a)(2), results on—

(A) Each of the academic assessments in reading/language arts, mathematics, and science under section 1111(b)(2) of

the Act, including the number and percentage of students at each level of achievement;

(B) Each measure included within the Academic Progress indicator under § 200.14(b)(2) for students in public elementary schools and secondary schools that are not high schools;

(C) The four-year adjusted cohort graduation rate and, if adopted by the State, any extended-year adjusted cohort graduation rate consistent with § 200.34; and

(D) Each measure included within the School Quality or Student Success indicator under § 200.14(b)(5).

(ii) The number and percentage of English learners achieving English language proficiency, as measured by the English language proficiency assessments under section 1111(b)(2)(G) of the Act.

(3) If the overview section required under paragraph (b)(2) of this section does not include disaggregated data for each subgroup required under section 1111(h)(1)(C) of the Act, a State must ensure that the disaggregated data not included in the overview section are otherwise included on the State report card.

(c) *Accessibility.* Each State report card must be in a format and language, to the extent practicable, that parents can understand in compliance with the requirements under § 200.21(b)(1) through (3).

(d) *Dissemination and availability.* (1) A State must—

(i) Disseminate widely to the public the State report card by, at a minimum, making it available on a single page of the SEA's Web site; and

(ii) Include on the SEA's Web site—

(A) The report card required under § 200.31 for each LEA in the State; and

(B) The annual report to the Secretary required under section 1111(h)(5) of the Act.

(e) *Timing of report card dissemination.* (1) Beginning with report cards based on information from the 2017–2018 school year, a State must annually disseminate report cards required under this section for the preceding school year no later than December 31.

(2) If a State cannot meet the December 31, 2018, deadline for reporting some or all of the newly required information under section 1111(h)(1)(C) of the Act for the 2017–2018 school year, the State may request from the Secretary a one-time, one-year extension for reporting on those To receive an extension, a State must submit to the Secretary, by July 1, 2018—

(i) Evidence satisfactory to the Secretary demonstrating that the State cannot meet the deadline in paragraph (e)(1) of this section; and

(ii) A plan and timeline addressing the steps the State will take to disseminate, as expeditiously as possible, report cards for the 2017–2018 school year consistent with this section.

(f) *Disaggregation of data.* (1) For the purpose of reporting disaggregated data under section 1111(h) of the Act, the following definitions apply:

(i) The term “migrant status” means status as a “migratory child” as defined in section 1309(3) of the Act, which means a child or youth who made a qualifying move in the preceding 36 months—

(A) As a migratory agricultural worker or a migratory fisher; or

(B) With, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher.

(ii) The term “homeless status” means status as “homeless children and youths” as defined in section 725 of the McKinney-Vento Homeless Assistance Act, which means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1) of the McKinney-Vento Homeless Assistance Act) and includes—

(A) Children and youths who are—

(1) Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(2) Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;

(3) Living in emergency or transitional shelters; or

(4) Abandoned in hospitals;

(B) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C) of the McKinney-Vento Homeless Assistance Act);

(C) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(D) Migratory children (as defined in this paragraph) who qualify as homeless for the purposes of this section because they are living in circumstances described in paragraph (f)(1)(ii)(A) through (C) of this section.

(iii) With respect to the term “status as a child in foster care,” the term “foster care” has the same meaning as defined in 45 CFR 1355(a), which means 24-hour substitute care for children

placed away from their parents and for whom the title IV–E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

(iv) With respect to the term “student with a parent who is a member of the Armed Forces on active duty,” the terms “Armed Forces” and “active duty” have the same meanings as defined in 10 U.S.C. 101(a)(4) and 101(d)(1):

(A) “Armed Forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(B) “Active duty” means full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) A State is not required to report disaggregated data for information required on report cards under section 1111(h) of the Act if the number of students in the subgroup is insufficient to yield statistically sound and reliable information or the results would reveal personally identifiable information about an individual student, consistent with § 200.17.

(Authority: 20 U.S.C. 1221e–3; 6311(h))

■ 19. Section § 200.31 is revised to read as follows:

**§ 200.31 Annual LEA report card.**

(a) *LEA report cards in general.* (1) An LEA that receives funds under subpart A of this part must prepare and disseminate to the public, consistent with paragraph (d) of this section, an annual LEA report card that meets the requirements of this section and includes information on the LEA as a whole and each school served by the LEA.

(2) Each LEA report card must include, at a minimum, the information required under section 1111(h)(2)(C) of the Act.

(b) *Format.* (1) The LEA report card must be concise and presented in an understandable and uniform format that is developed in consultation with parents.

(2) Each LEA report card must begin with, for the LEA as a whole and for each school served by the LEA, a clearly labeled overview section that is prominently displayed and includes the following information for the most recent school year:

(i) For all students and disaggregated, at a minimum, for each subgroup of students required under § 200.16(a)(2)—

(A) All information required under § 200.30(b)(2);

(B) For the LEA, how academic achievement under § 200.30(b)(2)(i)(A) compares to that for students in the State as a whole; and

(C) For each school, how academic achievement under § 200.30(b)(2)(i)(A) compares to that for students in the LEA and the State as a whole.

(ii) For each school—

(A) The summative rating of the school consistent with § 200.18(b)(4);

(B) Whether the school is identified for comprehensive support and improvement under § 200.19(a) and, if so, the reason for such identification (*e.g.*, lowest-performing school, low graduation rates); and

(C) Whether the school is identified for targeted support and improvement under § 200.19(b) and, if so, each consistently underperforming or low-performing subgroup for which it is identified.

(iii) Identifying information, including, but not limited to, the name, address, phone number, email, student membership count, and status as a participating Title I school.

(3) Each LEA must ensure that the overview section required under paragraph (b)(2) of this section for each school served by the LEA can be distributed to parents, consistent with paragraph (d)(2)(i) of this section, on a single piece of paper.

(4) If the overview section required under paragraph (b)(2) of this section does not include disaggregated data for each subgroup required under section 1111(h)(1)(C) of the Act, an LEA must ensure that the disaggregated data not included in the overview section are otherwise included on the LEA report card.

(c) *Accessibility.* Each LEA report card must be in a format and language, to the extent practicable, that parents can understand in compliance with the requirements under § 200.21(b)(1) through (3).

(d) *Dissemination and availability.* (1) An LEA report card must be accessible to the public.

(2) At a minimum the LEA report card must be made available on the LEA's Web site, except that an LEA that does not operate a Web site may provide the information to the public in another manner determined by the LEA.

(3) An LEA must provide the information described in paragraph (b)(2) of this section to the parents of each student enrolled in each school in the LEA—

(i) Directly, through such means as regular mail or email, except that if an LEA does not have access to individual student addresses, it may provide information to each school for distribution to parents; and

(ii) In a timely manner, consistent with the requirements under paragraph (e) of this section.

(e) *Timing of report card dissemination.* (1) Beginning with report cards based on information from the 2017–2018 school year, an LEA must annually disseminate report cards under this section for the preceding school year no later than December 31.

(2) If an LEA cannot meet the December 31, 2018, deadline for reporting some or all of the newly required information under section 1111(h)(2)(C) of the Act for the 2017–2018 school year, a State may request from the Secretary a one-time, one-year extension for reporting on those elements on behalf of the LEA consistent with the requirements under § 200.30(e)(2).

(f) *Disaggregation of data.* For the purpose of reporting disaggregated data under section 1111(h)(2)(C) of the Act, the requirements under § 200.30(f) apply to LEA report cards.

(Authority: 20 U.S.C. 1221e–3; 6311(h))

■ 20. Section 200.32 is revised to read as follows:

**§ 200.32 Description and results of a State's accountability system.**

(a) *Accountability system description.* Each State and LEA report card must include a clear and concise description of the State's current accountability system under §§ 200.12 to 200.24. Each accountability system description must include—

(1) The minimum number of students that the State establishes under § 200.17 for use in the accountability system;

(2) The long-term goals and measurements of interim progress that the State establishes under § 200.13 for all students and for each subgroup of students, as described in § 200.16(a)(2);

(3) The indicators used by the State under § 200.14 to annually meaningfully



differentiate among all public schools, including, if applicable, the State's uniform procedure for averaging data across years or combining data across grades consistent with § 200.20;

(4) The State's system for annually meaningfully differentiating all public schools in the State under § 200.18, including—

(i) The specific weight, consistent with § 200.18(c), of each indicator described in § 200.14(b) in such differentiation;

(ii) The way in which the State factors the requirement for 95 percent student participation in assessments under § 200.15(a) into its system of annual meaningful differentiation described in §§ 200.15(b) and 200.18(b)(5);

(iii) The methodology by which the State differentiates all such schools under § 200.18(b), including information on the performance levels and summative ratings provided by the State consistent with § 200.18(b)(3) and (4);

(iv) The methodology by which the State identifies a school for comprehensive support and improvement as described in § 200.19(a); and

(v) The methodology by which the State identifies a school with one or more consistently underperforming subgroups of students for targeted support and improvement as described in § 200.19(c), including the time period used by the State to determine consistent underperformance of a subgroup; and

(5) The exit criteria established by the State under §§ 200.21(f) and 200.22(f), including the number of years by which a school must meet the exit criteria.

(b) *Reference to State plan.* To the extent that a State plan or another location on the SEA's Web site provides a description of the accountability system elements required in paragraph (a)(1) through (5) of this section that complies with the requirements under § 200.21(b)(1) through (3), a State or LEA may provide the Web address or URL of, or a direct link to, such State plan or location on the SEA's Web site to meet the reporting requirement for such accountability system elements.

(c) *Accountability system results.* (1) Each State and LEA report card must include, as applicable, the number and names of each public school in the State or LEA identified by the State for—

(i) Comprehensive support and improvement under § 200.19(a); or

(ii) Targeted support and improvement under § 200.19(b).

(2) For each school identified by the State for comprehensive support and improvement under § 200.19(a), the

State and LEA report card must indicate which of the following reasons led to such identification:

(i) Lowest-performing school under § 200.19(a)(1).

(ii) Low graduation rates under § 200.19(a)(2).

(iii) One or more chronically low-performing subgroups under § 200.19(a)(3), including the subgroup or subgroups that led to such identification.

(3) For each school identified by the State for targeted support and improvement under § 200.19(b), the State and LEA report card must indicate—

(i) Which subgroup or subgroups led to the school's identification; and

(ii) Whether the school has one or more low-performing subgroups, consistent with § 200.19(b)(2).

(4) Each LEA report card must include, for each school served by the LEA, the school's performance level consistent with § 200.18(b)(3) on each indicator in § 200.14(b) and the school's summative rating consistent with § 200.18(b)(4).

(5) If a State includes more than one measure within any indicator under § 200.14(b), the LEA report card must include each school's results on each individual measure and the single performance level for the indicator overall, across all such measures.

(Authority: 20 U.S.C. 1221e-3; 6311(c), (h))

■ 21. Section 200.33 is revised to read as follows:

**§ 200.33 Calculations for reporting on student achievement and progress toward meeting long-term goals.**

(a) *Calculations for reporting student achievement results.* (1) Consistent with paragraph (a)(3) of this section, each State and LEA report card must include the percentage of students performing at each level of achievement under section 1111(b)(1)(A) of the Act (e.g., proficient, advanced) on the academic assessments under section 1111(b)(2) of the Act, by grade.

(2) Consistent with paragraph (a)(3) of this section, each LEA report card must also—

(i) Compare the results under paragraph (a)(1) of this section for students served by the LEA with students in the State as a whole; and

(ii) For each school served by the LEA, compare the results under paragraph (a)(1) of this section for students enrolled in the school with students served by the LEA and students in the State as a whole.

(3) Each State and LEA must include, with respect to each reporting

requirement under paragraphs (a)(1) and (2) of this section—

(i) Information for all students;

(ii) Information disaggregated by—  
(A) Each subgroup of students in § 200.16(a)(2);

(B) Migrant status;

(C) Gender;

(D) Homeless status;

(E) Status as a child in foster care; and

(F) Status as a student with a parent who is a member of the Armed Forces on active duty; and

(iii) Results based on both—

(A) The percentage of students at each level of achievement, in which the denominator includes the greater of—

(1) 95 percent of all students, or 95 percent of each subgroup of students, who are enrolled in the school, LEA, or State, respectively; or

(2) The number of all such students enrolled in the school, LEA, or State, respectively, who participate in the assessments required under section 1111(b)(2)(B)(v) of the Act; and

(B) The percentage of students at each level of achievement, in which the denominator includes all students with a valid test score.

(b) *Calculation for reporting on the progress of all students and each subgroup of students toward meeting the State-designed long-term academic achievement goals.* (1) Each State and LEA report card must indicate whether all students and each subgroup of students described in § 200.16(a)(2) met or did not meet the State measurements of interim progress for academic achievement under § 200.13(a).

(2) To meet the requirements of paragraph (b)(1) of this section, each State and LEA must calculate the percentage of students who are proficient and above on the State assessments required under section 1111(b)(2)(B)(v)(I) of the Act based on a denominator that includes the greater of—

(i) 95 percent of all students, and 95 percent of each subgroup of students, who are enrolled in the school, LEA, or State, respectively; or

(ii) The number of all such students enrolled in the school, LEA, or State, respectively who participate in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(c) *Calculation for reporting the percentage of students assessed and not assessed.* (1) Each State and LEA report card must include the percentage of all students, and the percentage of students disaggregated by each subgroup of students described in § 200.16(a)(2), gender, and migrant status, assessed and not assessed on the assessments required under section 1111(b)(2)(B)(v) of the Act.

(2) To meet the requirements of paragraph (c)(1) of this section, each State and LEA must include in the denominator of the calculation all students enrolled in the school, LEA, or State, respectively, at the time of testing. (Authority: 20 U.S.C. 1221e-3; 6311(c), (h))

■ 22. Section 200.34 is revised to read as follows:

**§ 200.34 High school graduation rate.**

(a) *Four-year adjusted cohort graduation rate.* A State must calculate a four-year adjusted cohort graduation rate for each public high school in the State in the following manner:

(1) The numerator must consist of the sum of—

(i) All students who graduate in four years with a regular high school diploma; and

(ii) All students with the most significant cognitive disabilities in the cohort, assessed using an alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) of the Act and awarded a State-defined alternate diploma.

(2) The denominator must consist of the number of students who form the adjusted cohort of entering first-time students in grade 9 enrolled in the high school no later than the date by which student membership data is collected annually by the State for submission to the National Center for Education Statistics.

(3) For those high schools that start after grade 9, the cohort must be calculated based on the earliest high school grade students attend.

(b) *Adjusting the cohort.* (1) “Adjusted cohort” means the students who enter grade 9 (or the earliest high school grade) plus any students who transfer into the cohort in grades 9 through 12, and minus any students removed from the cohort.

(2) “Students who transfer into the cohort” means the students who enroll after the beginning of the date of the determination of the cohort, up to and including in grade 12.

(3) To remove a student from the cohort, a school or LEA must confirm in writing that the student—

(i) Transferred out, such that the school or LEA has official written documentation that the student enrolled in another school or educational program that culminates in the award of a regular high school diploma, or a State-defined alternate diploma for students with the most significant cognitive disabilities;

(ii) Emigrated to another country;

(iii) Transferred to a prison or juvenile facility and participates in an

educational program that culminates in the award of a regular high school diploma, or State-defined alternate diploma for students with the most significant cognitive disabilities; or

(iv) Is deceased.

(4) A student who is retained in grade, enrolls in a general equivalency diploma program or other alternative education program that does not issue or provide credit toward the issuance of a regular high school diploma or a State-defined alternate diploma, or leaves school for any reason other than those described in paragraph (b)(3) of this section may not be counted as having transferred out for the purpose of calculating the graduation rate and must remain in the adjusted cohort.

(c) *Definition of terms.* For the purposes of calculating an adjusted cohort graduation rate under this section—

(1) “Students who graduate in four years” means students who earn a regular high school diploma at the conclusion of their fourth year, before the conclusion of their fourth year, or during a summer session immediately following their fourth year.

(2) “Regular high school diploma” means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA, as amended by the ESSA; and does not include a general equivalency diploma, certificate of completion, certificate of attendance, or any similar or lesser credential, such as a diploma based on meeting individualized education program (IEP) goals that are not fully aligned with the State’s grade-level academic content standards.

(3) “Alternate diploma” means a diploma for students with the most significant cognitive disabilities, consistent with the State’s definition under the proposed requirement in § 200.6(d)(1) that was subject to negotiated rulemaking under the ESSA and on which the negotiated rulemaking committee reached consensus, who are assessed with a State’s alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) of the Act and is—

(i) Standards-based;

(ii) Aligned with the State’s requirements for a regular high school diploma; and

(iii) Obtained within the time period for which the State ensures the availability of a free appropriate public

education under section 612(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 11412(a)(1)).

(d) *Extended-year adjusted cohort graduation rate.* In addition to calculating a four-year adjusted cohort graduation rate, a State may calculate and report an extended-year adjusted cohort graduation rate.

(1) “*Extended-year adjusted cohort graduation rate*” means the number of students who graduate in one or more additional years beyond the fourth year of high school with a regular high school diploma or a State-defined alternate diploma, divided by the number of students who form the adjusted cohort for the four-year adjusted cohort graduation rate, provided that the adjustments account for any students who transfer into the cohort by the end of the year of graduation being considered minus the number of students who transfer out, emigrate to another country, transfer to a prison or juvenile facility, or are deceased, as described in paragraph (b)(3) of this section.

(2) A State may calculate one or more extended-year adjusted cohort graduation rates, except that no extended-year adjusted cohort graduation rate may be for a cohort period longer than seven years.

(e) *Reporting on State and LEA report cards.* (1) A State and LEA report card must include, at the school, LEA, and State levels—

(i) Four-year adjusted cohort graduation rates and, if adopted by the State, extended-year adjusted cohort graduation rates for all students and disaggregated by each subgroup of students in § 200.16(a)(2), homeless status, and status as a child in foster care.

(ii) Whether all students and each subgroup of students described in § 200.16(a)(2) met or did not meet the State measurements of interim progress for graduation rates under § 200.13(b).

(2) A State and its LEAs must report the four-year adjusted cohort graduation rate and, if adopted by the State, extended-year adjusted cohort graduation rate that reflects results of the immediately preceding school year.

(3) If a State adopts an extended-year adjusted cohort graduation rate, the State and its LEAs must report the extended-year adjusted cohort graduation rate separately from the four-year adjusted cohort graduation rate.

(4) A State that offers an alternate diploma for students with the most significant cognitive disabilities within the time period for which the State ensures the availability of a free appropriate public education must—

(i) Not delay the timely reporting of graduation rates under paragraph (e)(2) of this section; and

(ii) Annually update the four-year adjusted cohort graduation rates and, if adopted by the State, extended-year adjusted cohort graduation rates reported for a given year to include in the numerator any students with the most significant cognitive disabilities who obtain a State-defined alternate diploma within the time period for which the State ensures the availability of a free appropriate public education.

(f) *Partial school enrollment.* Each State must apply the same approach in all LEAs to determine whether students who are enrolled in the same school for less than half of the academic year as described in § 200.20(b) who exit high school without a regular high school diploma and do not transfer into another high school that grants a regular high school diploma are counted in the denominator for reporting the adjusted cohort graduation rate—

(1) At the school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(2) At the school in which the student was most recently enrolled.

(Authority: 20 U.S.C. 1221e–3; 6311(h); 7801(23), (25))

■ 23. Section 200.35 is revised to read as follows:

**§ 200.35 Per-pupil expenditures.**

(a) *State report card requirements.* (1) Each State report card must include the following:

(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.30(e), for each LEA in the State, and for each school served by each LEA—

(A) In the aggregate; and

(B) Disaggregated by source of funds, including—

(1) Federal funds; and

(2) State and local funds combined (including Impact Aid funds), which must not include funds received from private sources.

(ii) The Web address or URL of, or direct link to, a description of the uniform procedure required under paragraph (c) of this section that complies with the requirements under § 200.21(b)(1) through (3).

(2) Each State report card must also separately include, for each LEA, the amount of current expenditures per pupil that were not allocated to public schools in the LEA.

(b) *LEA report card requirements.* (1) Each LEA report card must include the following:

(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.31(e), for the LEA and each school served by the LEA—

(A) In total (Federal, State, and local funds); and

(B) Disaggregated by source of funds, including—

(1) Federal funds; and

(2) State and local funds combined (including Impact Aid funds), which must not include funds received from private sources.

(ii) The Web address or URL of, or direct link to, a description of the uniform procedure required under paragraph (c) of this section.

(2) Each LEA report card must also separately include the amount of current expenditures per pupil that were not allocated to public schools in the LEA.

(c) *Uniform procedures.* A State must develop a single statewide procedure to calculate LEA current expenditures per pupil and a single statewide procedure to calculate school-level current expenditures per pupil, such that—

(1) The numerator consists of current expenditures, which means actual personnel costs (including actual staff salaries) and actual nonpersonnel expenditures of Federal, State, and local funds, used for public education—

(i) Including, but not limited to, expenditures for administration, instruction, instructional support, student support services, pupil transportation services, operation and maintenance of plant, fixed charges, and preschool, and net expenditures to cover deficits for food services and student body activities; but

(ii) Not including expenditures for community services, capital outlay, and debt service; and

(2) The denominator consists of the aggregate number of students in elementary and secondary schools to whom the State and LEA provide free public education on October 1, consistent with the student membership data collected annually by States for submission to the National Center for Education Statistics.

(Authority: 20 U.S.C. 1221e–3; 6311(h))

■ 24. Section 200.36 is revised to read as follows:

**§ 200.36 Postsecondary enrollment.**

(a) *Reporting information on postsecondary enrollment.* (1) Each State and LEA report card must include the information at the SEA, LEA and school level on postsecondary enrollment required under section

1111(h)(1)(C)(xiii) of the Act, where available, consistent with paragraph (c) of this section. This information must include, for each high school in the State (in the case of a State report card) and for each high school in the LEA (in the case of an LEA report card), the cohort rate (for all students and each subgroup of students under section § 200.16(a)(2)) at which students who graduate from high school enroll in programs of postsecondary education, including—

(i) Programs of public postsecondary education in the State; and

(ii) If data are available and to the extent practicable, programs of private postsecondary education in the State or programs of postsecondary education outside the State.

(2) For the purposes of this section, “programs of postsecondary education” has the same meaning as the term “institution of higher education” under section 101(a) of the Higher Education Act of 1965, as amended.

(b) *Calculating postsecondary enrollment.* To meet the requirements of paragraph (a) of this section, each State and each LEA must calculate the cohort rate in the following manner:

(1) The numerator must consist of the number of students who enroll in a program of postsecondary education in the academic year immediately following the students’ high school graduation.

(2) The denominator must consist of the number of students who graduated with a regular high school diploma or a State-defined alternate diploma from each high school in the State, in accordance with § 200.34, in the immediately preceding school year.

(c) *Information availability.* (1) For the purpose of paragraph (a) of this section, information is “available” if either—

(i) The State is routinely obtaining the information; or

(ii) The information is obtainable by the State on a routine basis.

(2) If the postsecondary enrollment information described in paragraph (a) of this section is not available or is partially available, the State and LEA report cards must include the school year in which such information is expected to be fully available.

(Authority: 20 U.S.C. 1001; 1221e–3; 6311(h))

■ 25. Section 200.37 is revised to read as follows:

**§ 200.37 Educator qualifications.**

(a) *Professional qualifications of educators in the State.* Each State and LEA report card must include, in the aggregate and disaggregated by high-

poverty and low-poverty schools, the number and percentage of the following:

(1) Inexperienced teachers, principals, and other school leaders;

(2) Teachers teaching with emergency or provisional credentials; and

(3) Teachers who are not teaching in the subject or field for which the teacher is certified or licensed.

(b) *Uniform definitions.* To meet the requirements of paragraph (a) of this section—

(1) “High-poverty schools” means schools in the top quartile of poverty in the State and “low-poverty schools” means schools in the bottom quartile of poverty in the State; and

(2) Each State must adopt, and the State and each LEA in the State must use, a statewide definition of the term “inexperienced” and of the phrase “not teaching in the subject or field for which the teacher is certified or licensed.”

(Authority: 20 U.S.C. 1221e–3; 6311(h))

#### **§§ 200.38 through 200.42 [Removed and Reserved]**

■ 26. Remove and reserve §§ 200.38 through 200.42.

■ 27. Add an undesignated center heading following reserved § 200.42 to read as follows:

#### **Other State Plan Provisions**

##### **§ 200.43 [Removed]**

■ 28. Remove § 200.43.

##### **§ 200.58 [Redesignated as § 200.43]**

■ 29. Redesignate § 200.58 as § 200.43.

#### **§§ 200.44 through 200.47 [Removed and Reserved]**

■ 30. Remove and reserve §§ 200.44 through 200.47.

■ 31. Add an undesignated center heading following reserved § 200.47 to read as follows:

#### **Local Educational Agency Plans**

##### **§ 200.48 [Removed]**

■ 32. Remove § 200.48.

##### **§ 200.61 [Redesignated as 200.48]**

■ 33. Redesignate § 200.61 as § 200.48.

#### **§§ 200.49 through 200.53 [Removed and Reserved]**

■ 34. Remove and reserve §§ 200.49 through 200.53.

■ 35. Add an undesignated center heading following reserved § 200.54 to read as follows:

#### **Participation of Eligible Children in Private Schools**

#### **§§ 200.55 through 200.57 [Removed and Reserved]**

■ 36. Remove §§ 200.55 through 200.57.

#### **§§ 200.62 through 200.64 [Redesignated as §§ 200.55 through 200.57]**

■ 37. Redesignate §§ 200.62 through 200.64 as §§ 200.55 through 200.57.

#### **§§ 200.58 through 200.60 [Removed]**

■ 38. Remove §§ 200.58 through 200.60.

##### **§ 200.65 [Redesignated as § 200.58]**

■ 39. Redesignate § 200.65 as § 200.58.

#### **§§ 200.66 through 200.67 [Redesignated as §§ 200.59 through 200.60]**

■ 40. Redesignate §§ 200.66 through 200.67 as §§ 200.59 through 200.60.

##### **§ 200.61 [Reserved]**

■ 41. Add reserved §§ 200.61.

##### **§ 200.62 [Removed and Reserved]**

■ 42. Remove and reserve § 200.62.

■ 43. Add an undesignated center heading following reserved § 200.62 to read as follows:

#### **Allocations to LEAs**

##### **§§ 200.63 through 200.67 [Removed]**

■ 44. Remove §§ 200.63 through 200.67.

#### **§§ 200.70 through 200.75 [Redesignated as §§ 200.63 through 200.68]**

■ 45. Redesignate §§ 200.70 through 200.75 as §§ 200.63 through 200.68.

■ 46. Add an undesignated center heading following reserved § 200.69 to read as follows:

#### **Procedures for the Within-District Allocation of LEA Program Funds**

##### **§§ 200.77 and 200.78 [Redesignated as §§ 200.70 and 200.71]**

■ 47. Redesignate §§ 200.77 and 200.78 as §§ 200.70 and 200.71.

■ 48. Add an undesignated center heading following § 200.71 to read as follows:

#### **Fiscal Requirements**

##### **§ 200.79 [Redesignated as § 200.73]**

■ 49. Redesignate § 200.79 as § 200.73.

##### **§ 200.79 [Reserved]**

■ 50. Add reserved § 200.79.

### **PART 299—GENERAL PROVISIONS**

■ 51. The authority citation for part 299 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted)

■ 52. Add Subpart G to read as follows:

#### **Subpart G—State Plans**

Sec.

299.13 Overview of State Plan Requirements.

299.14 Requirements for the consolidated State plan.

299.15 Consultation and coordination.

299.16 Challenging academic standards and academic assessments.

299.17 Accountability, support, and improvement for schools.

299.18 Supporting excellent educators.

299.19 Supporting all students.

#### **Subpart G—State Plans**

##### **§ 299.13 Overview of State plan requirements.**

(a) *In general.* In order to receive a grant under a program identified in paragraph (j) of this section, an SEA must submit a State plan that meets the requirements in this section and:

(1) Consolidated State plan requirements detailed in §§ 299.14 to 299.19; or

(2) Individual program application requirements under the Act (hereinafter “individual program State plan”) as detailed in paragraph (k) of this section.

(b) *Timely and meaningful consultation.* In developing, revising, or amending a consolidated State plan or an individual program State plan, an SEA must engage in timely and meaningful consultation with stakeholders. To satisfy its obligations under this paragraph, each SEA must—

(1) Provide public notice, in a format and language, to the extent practicable, that the public can access and understand in compliance with the requirements under § 200.21(b)(1) through (3), of the SEA’s processes and procedures for developing and adopting its consolidated State plan or individual program State plan.

(2) Conduct outreach to, and solicit input from, the individuals and entities listed in § 299.15(a) for submission of a consolidated State plan or the individuals and entities listed in the applicable statutes for submission of an individual program State plan—

(i) During the design and development of the SEA’s plan to implement the programs included in paragraph (j) of this section;

(ii) Prior to submission of the consolidated State plan or individual program State plan by making the plan available for public comment for a period of not less than 30 days; and

(iii) Prior to the submission of any revisions or amendments to the consolidated State plan or individual program State plan.

(3) Describe how the consultation and public comment were taken into account in the consolidated State plan or individual program State plan submitted for approval, including—

(i) How the SEA addressed the issues and concerns raised through consultation and public comment; and

(ii) Any changes made as a result of consultation and public comment.

(4) Meet the requirements under section 8540 of the Act regarding

consultation with the Governor, or appropriate officials from the Governor's office, including consultation during the development of a consolidated State plan or individual title I or title II State plan and prior to submission of such plan to the Secretary and procedures regarding the signature of such plan.

(c) *Assurances.* An SEA that submits either a consolidated State plan or an individual program State plan must submit to the Secretary the assurances included in section 8304 of the Act. An SEA also must include the following assurances when submitting either a consolidated State plan or an individual program State plan for the following programs:

(1) *Title I, part A.* (i) The SEA will assure that, in applying the same approach in all LEAs to determine whether students who are enrolled in the same school for less than half of the academic year as described in § 200.20(b) who exit high school without a regular high school diploma and do not transfer into another high school that grants a regular high school diploma are counted in the denominator for reporting the adjusted cohort graduation rate using one of the following:

(A) At the school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(B) At the school in which the student was most recently enrolled.

(ii) The SEA will ensure that an LEA receiving funds under title I, part A of the Act will provide children in foster care transportation, as necessary, to and from their schools of origin, consistent with the procedures developed by the LEA in collaboration with the State or local child welfare agency under section 1112(c)(5)(B) of the Act, even if the LEA and local child welfare agency do not agree on which agency or agencies will pay any additional costs incurred to provide such transportation.

(2) *Title III, part A.* In establishing the statewide entrance procedures required under section 3113(b)(2) of the Act, the SEA will ensure that:

(i) All students who may be English learners are assessed for such status using a valid and reliable instrument within 30 days after enrollment in a school in the State;

(ii) It has established procedures for the timely identification of English learners after the initial identification period for students who were enrolled at that time but were not previously identified; and

(iii) It has established procedures for removing the English learner

designation from any student who was erroneously identified as an English learner, which must be consistent with Federal civil rights obligations.

(3) *Title V, part b, subpart 2.* The SEA will assure that, no later than March of each year, it will submit data to the Secretary on the number of students in average daily attendance for the preceding school year in kindergarten through grade 12 for LEAs eligible for funding under the Rural and Low-Income School program, as described under section 5231 of the Act.

(d) *Process for submitting an initial consolidated State plan or individual program State plan.* When submitting an initial consolidated State plan or an individual program State plan, an SEA must adhere to the following timeline and process.

(1) *Assurances.* In order to receive Federal allocations for the programs included in paragraph (j) of this section for fiscal year 2017, no later than March 6, 2017, the SEA must submit the required assurances described in paragraph (c) of this section.

(2) *Submission deadlines.* (i) Each SEA must submit to the Department either a consolidated State plan or individual program State plan for each program in paragraph (j) of this section on a date and time established by the Secretary.

(ii) A consolidated State plan or an individual program State plan is considered to be submitted on the date and time established by the Secretary if it is received by the Secretary on or prior to that date and time and addresses all of the required components in § 299.14 for a consolidated State plan or all statutory and regulatory application requirements for an individual program State plan.

(iii) Each SEA must submit either a consolidated State plan or an individual program State plan for all of the programs in paragraph (j) in a single submission on the date and time established by the Secretary consistent with paragraph (d)(2)(i) of this section.

(3) *Extension for educator equity student-level data calculation.* If an SEA cannot calculate and report the data required under paragraph § 299.18(c)(3)(i) when submitting its initial consolidated State plan or individual title I, part A State plan, the SEA may request a two-year extension from the Secretary.

(i) To receive an extension, the SEA must submit to the Secretary, by eight weeks after the effective date of this section—

(A) Evidence satisfactory to the Secretary demonstrating that the State cannot calculate and report the data

described under paragraph § 299.18(c)(3)(i) when it submits either its initial consolidated State plan or individual title I, part A program State plan; and

(B) A detailed plan and timeline addressing the steps the SEA will take to calculate and report, as expeditiously as possible but no later than two years from the date it submits its initial consolidated State plan or individual title I, part A program State plan, the data required under § 299.18(c)(3)(i).

(ii) An SEA that receives an extension under paragraph (d)(3) of this section must, when it submits either its initial consolidated State plan or individual title I, part A program State plan, still calculate and report disproportionalities based on school-level data for each of the groups listed in § 299.18(c)(2) and describe how the SEA will eliminate any disproportionate rates consistent with § 299.18(c)(6).

(e) *Opportunity to revise initial State plan.* An SEA may revise its initial consolidated State plan or its individual program State plan in response to a preliminary written determination by the Secretary. The period for Secretarial review of a consolidated State plan or an individual program State plan under sections 1111(a)(4)(A)(v) or 8451 of the Act is suspended while the SEA revises its plan. If an SEA fails to resubmit revisions to its plan within 45 days of receipt of the preliminary written determination, the Secretary may issue a final written determination under sections 1111(a)(4)(A)(v) or 8451 of the Act.

(f) *Publication of State plan.* After the Secretary approves a consolidated State plan or an individual program State plan, an SEA must publish its approved consolidated State plan or individual program State plan on the SEA's Web site in a format and language, to the extent practicable, that the public can access and understand in compliance with the requirements under § 200.21(b)(1) through (3).

(g) *Amendments and Significant Changes.* If an SEA makes significant changes to its approved consolidated State plan or individual program State plan at any time, such as the adoption of new academic assessments under section 1111(b)(2) of the Act or changes to its accountability system under section 1111(c) of the Act, such information shall be submitted to the Secretary in the form of an amendment to its State plan for review and approval. Prior to submitting an amendment to its consolidated State plan or individual program State plan, the SEA must engage in timely and

meaningful consultation, consistent with paragraph (b) of this section.

(h) *Revisions.* At least once every four years, an SEA must review and revise its approved consolidated State plan or individual program State plans. The SEA must submit its revisions to the Secretary for review and approval. In reviewing and revising its consolidated State plan or individual program State plan, each SEA must engage in timely and meaningful consultation, consistent with paragraph (b) of this section.

(i) *Optional consolidated State plan.* An SEA may submit either a consolidated State plan or an individual program State plan for any program identified in paragraph (j) of this section. An SEA that submits a consolidated State plan is not required to submit an individual program State plan for any of the programs to which the consolidated State plan applies.

(j) *Programs that may be included in a consolidated State plan.* (1) Under section 8302 of the Act, an SEA may include in a consolidated State plan any programs authorized by—

(i) Title I, part A: Improving Basic Programs Operated by State and Local Educational Agencies;

(ii) Title I, part C: Education of Migratory Children;

(iii) Title I, part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;

(iv) Title II, part A: Supporting Effective Instruction;

(v) Title III, part A: Language Instruction for English Learners and Immigrant Students;

(vi) Title IV, part A: Student Support and Academic Enrichment Grants;

(vii) Title IV, part B: 21st Century Community Learning Centers; and

(viii) Title V, part B, Subpart 2: Rural and Low-Income School Program.

(2) In addition to the programs identified in paragraph (j)(1) of this section, under section 8302(a)(1)(B) of the Act, an SEA may also include in the consolidated State plan the following programs as designated by the Secretary—

(i) The Grants for State Assessments and Related Activities program under section 1201 of title I, part B of the Act.

(ii) The Education for Homeless Children and Youths program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (McKinney-Vento).

(k) *Individual program State plan requirements.* An SEA that submits an individual program State plan for one or more of the programs listed in paragraph (j) of this section must address all State plan or application

requirements applicable to such programs as outlined in the Act and applicable regulations, including all required statutory programmatic assurances. In addition to addressing the statutory and regulatory plan or application requirements for each individual program, an SEA that submits an individual program State plan—

(1) For title I, part A, must:

(i) Meet the educator equity requirements in § 299.18(c) in order to address section 1111(g)(1)(B) of the Act; and

(ii) Meet the schoolwide waiver requirements in § 299.19(c)(1) in order to implement section 1114(a)(1)(B) of the Act; and

(2) For title III, must meet the English learner requirements in § 299.19(c)(2) in order to address section 3113(b)(2) of the Act.

(l) *Compliance with program requirements.* Each SEA must administer all programs in accordance with all applicable statutes, regulations, program plans, and applications, and maintain documentation of this compliance.

(Authority: 20 U.S.C. 1221e–3, 7801(11), 7842, 7844, 7845)

#### **§ 299.14 Requirements for the consolidated State plan.**

(a) *Purpose.* Pursuant to section 8302 of the Act, the Department defines the procedures under which an SEA may submit a consolidated State plan for any or all of the programs listed in § 299.13(j).

(b) *Framework for the consolidated State plan.* Each consolidated State plan must address the requirements in §§ 299.15 through 299.19 for the following five components and their corresponding elements:

(1) Consultation and coordination.

(2) Challenging academic standards and academic assessments.

(3) Accountability, support, and improvement for schools.

(4) Supporting excellent educators.

(5) Supporting all students.

(c) *Performance management and technical assistance.* In its consolidated State plan, each State must describe its system of performance management for implementation of State and LEA plans for each component required under §§ 299.16 through 299.19. This description must include—

(1) The SEA's process for supporting the development of, review, and approval of the activities in LEA plans in accordance with statutory and regulatory requirements, including a description of how the SEA will

determine if LEA activities are aligned with the specific needs of the LEA and the State's strategies described in its consolidated State plan.

(2) The SEA's plan, including strategies and timelines, to—

(i) Collect and use data and information, including input from stakeholders, to assess the quality of SEA and LEA implementation of strategies and progress toward improving student outcomes and meeting the desired program outcomes;

(ii) Monitor SEA and LEA implementation of included programs using the data in paragraph (c)(2)(i) of this section to ensure compliance with statutory and regulatory requirements; and

(iii) Continuously improve implementation of SEA and LEA strategies and activities that are not leading to satisfactory progress toward improving student outcomes and meeting the desired program outcomes; and

(3) The SEA's plan, including strategies and timelines, to provide differentiated technical assistance to LEAs and schools to support effective implementation of SEA, LEA, and other subgrantee strategies.

(Authority: 20 U.S.C. 1221e–3, 7842)

#### **§ 299.15 Consultation and coordination.**

(a) *Consultation.* In its consolidated State plan, each SEA must describe how it engaged in timely and meaningful consultation consistent with § 299.13(b) with stakeholders in the development of each of the four components identified in §§ 299.16 through 299.19 of its consolidated plan. The stakeholders must include the following individuals and entities and must reflect the geographic diversity of the State:

(1) The Governor, or appropriate officials from the Governor's office;

(2) Members of the State legislature;

(3) Members of the State board of education (if applicable);

(4) LEAs, including LEAs in rural areas;

(5) Representatives of Indian tribes located in the State;

(6) Teachers, principals, other school leaders, paraprofessionals, specialized instructional support personnel, and organizations representing such individuals;

(7) Charter school leaders, if applicable;

(8) Parents and families;

(9) Community-based organizations;

(10) Civil rights organizations, including those representing students with disabilities, English learners, and other historically underserved students;

(11) Institutions of higher education (IHEs);

(12) Employers; and

(13) The public.

(b) *Coordination.* In its consolidated State plan, each SEA must describe how it is coordinating its plans for administering the included programs, other programs authorized under the ESEA, as amended by the ESSA, and IDEA, the Rehabilitation Act, the Carl D. Perkins Career and Technical Education Act of 2006, the Workforce Innovation and Opportunity Act, the Head Start Act, the Child Care and Development Block Grant Act of 1990, the Education Sciences Reform Act of 2002, the Education Technical Assistance Act of 2002, the National Assessment of Educational Progress Authorization Act, and the Adult Education and Family Literacy Act.

(Authority: 20 U.S.C. 1221e–3, 6311, 7842)

**§ 299.16 Challenging academic standards and academic assessments.**

(a) *Challenging State academic standards.* In its consolidated State plan, each SEA must—

(1) Provide evidence at such time and in such manner specified by the Secretary that the State has adopted challenging academic content standards and aligned academic achievement standards in the required subjects and grades consistent with section 1111(b)(1)(A)–(D) of the Act;

(2) If the State has adopted alternate academic achievement standards for students with the most significant cognitive disabilities, provide evidence at such time and in such manner specified by the Secretary that those standards meet the requirements of section 1111(b)(1)(E) of the Act; and

(3) Provide evidence at such time and in such manner specified by the Secretary that the State has adopted English language proficiency standards under section 1111(b)(1)(F) of the Act that—

(i) Are derived from the four recognized domains of speaking, listening, reading, and writing;

(ii) Address the different proficiency levels of English learners; and

(iii) Are aligned with the State's challenging academic standards.

(b) *Academic assessments.* In its consolidated State plan, each SEA must—

(1) Identify the high-quality student academic assessments that the State is implementing under section 1111(b)(2) of the Act, including:

(A) High-quality student academic assessments in mathematics, reading or language arts, and science consistent

with the requirements under section 1111(b)(2)(B) of the Act;

(B) Any assessments used under the exception for advanced middle school mathematics under section 1111(b)(2)(C)(iii) of the Act;

(C) Alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards for students with the most significant cognitive disabilities;

(D) Uniform statewide assessment of English language proficiency, including reading, writing, speaking, and listening skills consistent with § 200.6(f)(3); and

(E) Any approved locally selected nationally recognized high school assessments consistent with § 200.3;

(2) Provide evidence at such time and in such manner specified by the Secretary that the State's assessments identified in paragraph (b)(1) of this section meet the requirements of section 1111(b)(2) of the Act;

(3) Describe its strategies to provide all students in the State the opportunity to be prepared for and to take advanced mathematics coursework in middle school consistent with section 1111(b)(2)(C) and § 200.5;

(4) Describe the steps it has taken to incorporate the principles of universal design for learning, to the extent feasible, in the development of its assessments, including any alternate assessments aligned with alternate academic achievement standards that the State administers consistent with sections 1111(b)(2)(B)(xiii) and 1111(b)(2)(D)(i)(IV) of the Act;

(5) Consistent with § 200.6, describe how it will ensure that the use of appropriate accommodations, if applicable, do not deny an English learner—

(A) The opportunity to participate in the assessment; and

(B) Any of the benefits from participation in the assessment that are afforded to students who are not English learners;

(6) Describe how it is complying with the requirements in § 200.6(f)(1)(ii)(B) through (E) related to assessments in languages other than English;

(7) Describe how the State will use formula grant funds awarded under section 1201 of the Act to pay the costs of development of the high-quality State assessments and standards adopted under section 1111(b) of the Act or, if a State has developed those assessments, to administer those assessments or carry out other assessment activities consistent with section 1201(a) of the Act.

(Authority: 20 U.S.C. 1221e–3, 6311(b), 7842)

**§ 299.17 Accountability, support, and improvement for schools.**

(a) *Long-term goals.* In its consolidated State plan, each SEA must describe its long-term goals, including how it established its ambitious long-term goals and measurements of interim progress for academic achievement, graduation rates, and English language proficiency, including its State-determined timeline for attaining such goals, consistent with the requirements in § 200.13 and section 1111(c)(4)(A) of the Act.

(b) *Accountability system.* In its consolidated State plan, each SEA must describe its statewide accountability system consistent with the requirements of section 1111(c) of the Act and § 200.12, including—

(1) The measures included in each of the indicators and how those measures meet the requirements described in § 200.14(c) through (e) and section 1111(c)(4)(B) of the Act for all students and separately for each subgroup of students used to meaningfully differentiate all public schools in the State;

(2) The subgroups of students from each major racial and ethnic group, consistent with § 200.16(a)(2);

(3) If applicable, the statewide uniform procedures for:

(i) Former English learners consistent with § 200.16(b)(1), and

(ii) Recently arrived English learners in the State to determine if an exception is appropriate for an English learner consistent with section 1111(b)(3) of the Act and § 200.16(b)(4);

(4) The minimum number of students that the State determines are necessary to be included in each of the subgroups of students consistent with § 200.17(a)(3);

(5) The State's system for meaningfully differentiating all public schools in the State, including public charter schools, consistent with the requirements of section 1111(c)(4)(C) of the Act and § 200.18, including—

(i) The distinct levels of school performance, and how they are calculated, under § 200.18(b)(3) on each indicator in the statewide accountability system;

(ii) The weighting of each indicator, including how certain indicators receive substantial weight individually and much greater weight in the aggregate, consistent with § 200.18(c) and (d); and

(iii) The summative ratings, including how they are calculated, that are provided to schools under § 200.18(b)(4);

(6) How the State is factoring the requirement for 95 percent student participation in assessments into its



system of annual meaningful differentiation of schools consistent with the requirements of § 200.15;

(7) The State's uniform procedure for averaging data across school years and combining data across grades as defined in § 200.20(a), if applicable;

(8) If applicable, how the State includes all public schools in the State in its accountability system if it is different from the methodology described in paragraph (b)(5), including—

(i) Schools in which no grade level is assessed under the State's academic assessment system (e.g., P–2 schools), although the State is not required to administer a formal assessment to meet this requirement;

(ii) Schools with variant grade configurations (e.g., P–12 schools);

(iii) Small schools in which the total number of students that can be included on any indicator under § 200.14 is less than the minimum number of students established by the State under § 200.17(a)(1), consistent with a State's uniform procedures for averaging data under § 200.20(a), if applicable;

(iv) Schools that are designed to serve special populations (e.g., students receiving alternative programming in alternative educational settings, students living in local institutions for neglected or delinquent children, students enrolled in State public schools for the blind, recently arrived English learners); and

(v) Newly opened schools that do not have multiple years of data, consistent with a State's uniform procedure for averaging data under § 200.20(a), if applicable.

(c) *Identification of schools.* In its consolidated State plan, each SEA must describe—

(1) The methodologies by which the State identifies schools for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the Act and § 200.19(a), including:

(i) Lowest-performing schools;

(ii) Schools with low high school graduation rates; and

(iii) Schools with chronically low-performing subgroups;

(2) The uniform statewide exit criteria for schools identified for comprehensive support and improvement established by the State under section 1111(d)(3)(A)(i) of the Act and consistent with the requirements in § 200.21(f)(1), including the number of years over which schools are expected to meet such criteria;

(3) The State's methodology for identifying schools with “consistently underperforming” subgroups of

students, including the definition and time period used by the State to determine consistent underperformance, under § 200.19(b)(1) and (c);

(4) The State's methodology for identifying additional targeted support schools with low-performing subgroups of students under § 200.19(b)(2); and

(5) The uniform exit criteria for schools requiring additional targeted support due to low-performing subgroups established by the State consistent with the requirements in § 200.22(f).

(d) *State support and improvement for low-performing schools.* In its consolidated State plan, each SEA must describe—

(1) Its process for making grants to LEAs under section 1003 of the Act consistent with the requirements of § 200.24 to serve schools implementing comprehensive or targeted support and improvement plans under section 1111(d) of the Act and consistent with the requirements in §§ 200.21 and 200.22;

(2) Its process to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all public schools accountable for student academic achievement and school success consistent with §§ 200.21 through 200.24, and, if applicable, the list of State-approved, evidence-based interventions for use in schools implementing comprehensive or targeted support and improvement plans;

(3) The more rigorous interventions required for schools identified for comprehensive support and improvement that fail to meet the State's exit criteria within a State-determined number of years consistent with section 1111(d)(3)(A)(i) of the Act and § 200.21(f);

(4) Its process, consistent with the requirements in section 1111(d)(3)(A)(ii) of the Act and § 200.23(a), for periodically reviewing and addressing resource allocation to ensure sufficient support for school improvement in each LEA in the State serving a significant number of schools identified for comprehensive support and improvement and in each LEA serving a significant number of schools implementing targeted support and improvement plans; and

(5) Other State-identified strategies, including timelines and funding sources from included programs consistent with allowable uses of funds provided under those programs, as applicable, to improve low-performing schools.

(e) *Performance management and technical assistance.* In addition to the

requirements in § 299.14(c), each SEA must describe—

(1) Its process to approve, monitor, and periodically review LEA comprehensive support and improvement plans consistent with the requirements in section 1111(d)(1)(B)(v) and (vi) of the Act and § 200.21(e); and

(2) The technical assistance it will provide to each LEA in the State serving a significant number of schools identified for comprehensive and targeted support and improvement, including technical assistance related to selection of evidence-based interventions, consistent with the requirements in section 1111(d)(3)(A)(iii) of the Act and § 200.23(b).

(3) Any additional improvement actions the State may take consistent with § 200.23(c), including additional supports for or interventions in LEAs, or in any authorized public chartering agency consistent with State charter school law, with a significant number of schools identified for comprehensive support and improvement that are not meeting exit criteria or a significant number of schools identified for targeted support or improvement.

(Authority: 20 U.S.C. 1221e–3, 6303, 6311(c), (d), 7842)

#### **§ 299.18 Supporting excellent educators.**

(a) *Systems of educator development, retention, and advancement.* In its consolidated State plan, consistent with sections 2101 and 2102 of the Act, each SEA must describe its educator development, retention, and advancement systems, including, at a minimum—

(1) The State's system of certification and licensing of teachers and principals or other school leaders;

(2) The State's system to ensure adequate preparation of new educators, particularly for low-income and minority students; and

(3) The State's system of professional growth and improvement, which may include the use of an educator evaluation and support system, for educators that addresses induction, development, compensation, and advancement for teachers, principals, and other school leaders if the State has elected to implement such a system. Alternatively, the SEA must describe how it will ensure that each LEA has and is implementing a system of professional growth and improvement for teachers, principals, and other school leaders that addresses induction, development, compensation, and advancement.

(b) *Support for educators.* (1) In its consolidated State plan, each SEA must

describe how it will use title II, part A funds and funds from other included programs, consistent with allowable uses of funds provided under those programs, to support State-level strategies designed to:

- (i) Increase student achievement consistent with the challenging State academic standards;
  - (ii) Improve the quality and effectiveness of teachers and principals or other school leaders;
  - (iii) Increase the number of teachers and principals or other school leaders who are effective in improving student academic achievement in schools; and
  - (iv) Provide low-income and minority students greater access to effective teachers, principals, and other school leaders consistent with the provisions described in paragraph (c) of this section.
- (2) In its consolidated State plan, each SEA must describe—
- (i) How the SEA will improve the skills of teachers, principals, or other school leaders in identifying students with specific learning needs and providing instruction based on the needs of such students consistent with section 2101(d)(2)(J) of the Act, including strategies for teachers of, and principals or other school leaders in schools with:
    - (A) Low-income students;
    - (B) Lowest-achieving students;
    - (C) English learners;
    - (D) Children with disabilities;
    - (E) Children and youth in foster care;
    - (F) Migratory children, including preschool migratory children and migratory children who have dropped out of school;
    - (G) Homeless children and youths;
    - (H) Neglected, delinquent, and at-risk children identified under title I, part D of the Act;
    - (I) Immigrant children and youth;
    - (J) Students in LEAs eligible for grants under the Rural and Low-Income School Program under section 5221 of the Act;
    - (K) American Indian and Alaska Native students;
    - (L) Students with low literacy levels; and
    - (M) Students who are gifted and talented;
  - (ii) If the SEA or its LEAs plan to use funds under one or more of the included programs for this purpose, how the SEA will work with LEAs in the State to develop or implement State or local teacher, principal or other school leader evaluation and support systems consistent with section 2101(c)(4)(B)(ii) of the Act; and
  - (iii) If the SEA plans to use funds under one or more of the included programs for this purpose, how the State

will improve educator preparation programs consistent with section 2101(d)(2)(M) of the Act.

(3) In its consolidated State plan, each SEA must describe its rationale for, and its timeline for the design and implementation of, the strategies identified under paragraph (b)(1) and (2) of this section.

(c) *Educator equity.* (1) Each SEA must demonstrate, consistent with section 1111(g)(1)(B) of the Act, whether low-income and minority students enrolled in schools that receive funds under title I, part A of the Act are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers compared to non-low-income and non-minority students enrolled in schools not receiving funds under title I, part A of the Act in accordance with paragraph (c)(3) of this section.

(2) For the purposes of this section, each SEA must establish and provide in its State plan different definitions, using distinct criteria so that each provides useful information about educator equity and disproportionality rates, for each of the terms included in paragraphs (c)(2)(i) through (iii) of this section—

- (i) A statewide definition of “ineffective teacher”, or statewide guidelines for LEA definitions of “ineffective teacher”, that differentiates between categories of teachers;
- (ii) A statewide definition of “out-of-field teacher” consistent with § 200.37;
- (iii) A statewide definition of “inexperienced teacher” consistent with § 200.37;
- (iv) A statewide definition of “low-income student”;
- (v) A statewide definition of “minority student” that includes, at a minimum, race, color, and national origin, consistent with title VI of the Civil Rights Act of 1964; and
- (vi) Such other definitions for any other key terms that a State elects to define and use for the purpose of making the demonstration required under paragraph (c)(1) of this section.

(3) For the purpose of making the demonstration required under paragraph (c)(1) of this section—

(i) *Rates.* Each SEA must annually calculate and report, such as through a State report card, statewide based on student level data, except as permitted under § 299.13(d)(3), the rates at which—

- (A) Low-income students enrolled in schools receiving funds under title I, part A of the Act, are taught by—
  - (1) Ineffective teachers;
  - (2) Out-of-field teachers; and
  - (3) Inexperienced teachers; and

(B) Non-low-income students enrolled in schools not receiving funds under title I, part A of the Act, are taught by—

- (1) Ineffective teachers;
- (2) Out-of-field teachers; and
- (3) Inexperienced teachers;
- (C) Minority students enrolled in schools receiving funds under title I, part A of the Act are taught by—
  - (1) Ineffective teachers;
  - (2) Out-of-field teachers; and
  - (3) Inexperienced teachers; and
  - (D) Non-minority students enrolled in schools not receiving funds under title I, part A of the Act are taught by—
    - (1) Ineffective teachers;
    - (2) Out-of-field teachers; and
    - (3) Inexperienced teachers;

(ii) *Other rates.* Each SEA may annually calculate and report statewide at the student level, except as permitted under § 299.13(d)(3), the rates at which students represented by any other key terms that a State elects to define and use for the purpose of this section are taught by ineffective teachers, out-of-field teachers, and inexperienced teachers.

(iii) *Disproportionate Rates.* Each SEA must calculate and report the differences, if any, between the rates calculated in paragraph (c)(3)(A) and (B), and between the rates calculated in paragraph (c)(3)(C) and (D) of this section.

(4) Each SEA must publish and annually update—

- (i) The rates and disproportionalities required under paragraph (c)(3) of this section;
- (ii) The percentage of teachers categorized in each LEA at each effectiveness level established as part of the definition of “ineffective teacher” under paragraph (c)(2)(i) of this section, consistent with applicable State privacy policies;
- (iii) The percentage of teachers categorized as out-of-field teachers consistent with § 200.37; and
- (iv) The percentage of teachers categorized as inexperienced teachers consistent with § 200.37.

(v) The information required under paragraphs (c)(4)(i) through (iv) of this section in a manner that is easily accessible and comprehensible to the general public, available at least on a public Web site, and, to the extent practicable, provided in a language that parents of students enrolled in all schools in the State can understand, in compliance with the requirements under § 200.21(b)(1) through (3). If the information required under paragraphs (c)(4)(i) through (iv) is made available in ways other than on a public Web site, it must be provided in compliance with the requirements under § 200.21(b)(1) through (3).

(5) Each SEA must describe where it will publish and annually update the rates and disproportionalities calculated under paragraph (c)(3) of this section and report on the rates and disproportionalities in the manner described in paragraph (c)(4)(v) of this section.

(6) Each SEA that demonstrates, under paragraph (c)(1) of this section, that low-income or minority students enrolled in schools receiving funds under title I, part A of this Act are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers must—

(i) Describe the root cause analysis, including the level of disaggregation of disproportionality data (e.g., statewide, between districts, within district, and within school), that identifies the factor or factors causing or contributing to the disproportionate rates demonstrated under paragraph (c)(1) of this section; and

(ii) Provide its strategies, including timelines and funding sources, to eliminate the disproportionate rates demonstrated under paragraph (c)(1) of this section that—

(A) Is based on the root cause analysis required under paragraph (c)(6)(i) of this section; and

(B) Focuses on the greatest or most persistent rates of disproportionality demonstrated under paragraph (c)(1) of this section, including by prioritizing strategies to support any schools identified for comprehensive or targeted support and improvement under § 200.19 that are contributing to those disproportionate rates.

(7) To meet the requirements of paragraph (c)(6) of this section, an SEA may—

(i) Direct an LEA, including an LEA that contributes to the disproportionality demonstrated by the SEA in paragraph (c)(1) of this section, to use a portion of its title II, part A, funds in a manner that is consistent with allowable activities identified in section 2103(b) of the Act to provide low-income and minority students greater access to effective teachers and principals or other school leaders, and

(ii) Require an LEA to describe in its title II, part A plan or consolidated local plan how it will use title II, part A funds to address disproportionality in educator equity as described in this paragraph (c) and deny an LEA's application for title II, part A funds if an LEA fails to describe how it will address identified disproportionalities or fails to meet other local application requirements applicable to title II, part A.

(Authority: 20 U.S.C. 1221e–3, 6311(g), 6601, 6611(d), 8302)

#### § 299.19 Supporting all students.

(a) *Well-rounded and supportive education for students.* (1) In its consolidated State plan, each SEA must describe its strategies, its rationale for the selected strategies, timelines, and how it will use funds under the programs included in its consolidated State plan and support LEA use of funds to ensure that all children have a significant opportunity to meet challenging State academic standards and career and technical standards, as applicable, and attain, at a minimum, a regular high school diploma consistent with § 200.34, for, at a minimum, the following:

(i) The continuum of a student's education from preschool through grade 12, including transitions from early childhood education to elementary school, elementary school to middle school, middle school to high school, and high school to post-secondary education and careers, in order to support appropriate promotion practices and decrease the risk of students dropping out;

(ii) Equitable access to a well-rounded education and rigorous coursework in subjects such as English, reading/language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, history, geography, computer science, music, career and technical education, health, physical education, and any other subjects in which female students, minority students, English learners, children with disabilities, and low-income students are underrepresented;

(iii) School conditions for student learning, including activities to reduce—

(A) Incidents of bullying and harassment;

(B) The overuse of discipline practices that remove students from the classroom, such as out-of-school suspensions and expulsions; and

(C) The use of aversive behavioral interventions that compromise student health and safety;

(iv) The effective use of technology to improve the academic achievement and digital literacy of all students;

(v) Parent, family, and community engagement;

(vi) The accurate identification of English learners and children with disabilities; and

(vii) Other State-identified strategies.

(2) In describing the strategies, rationale, timelines, and funding

sources in paragraph (a)(1) of this section, each SEA must consider—

(i) The academic and non-academic needs of subgroups of students including—

(A) Low-income students.

(B) Lowest-achieving students.

(C) English learners.

(D) Children with disabilities.

(E) Children and youth in foster care.

(F) Migratory children, including preschool migratory children and migratory children who have dropped out of school.

(G) Homeless children and youths.

(H) Neglected, delinquent, and at-risk students identified under title I, part D of the Act.

(I) Immigrant children and youth.

(J) Students in LEAs eligible for grants under the Rural and Low-Income School program under section 5221 of the Act.

(K) American Indian and Alaska Native students.

(ii) Data and information on resource equity consistent with paragraph (a)(3) of this section.

(3) In its consolidated State plan, the SEA must use information and data on resource equity collected and reported under section 1111(h) of the Act and §§ 200.35 and 200.37 including a review of LEA-level budgeting and resource allocation related to—

(A) Per-pupil expenditures of Federal, State, and local funds;

(B) Educator qualifications as described in § 200.37;

(C) Access to advanced coursework; and

(D) The availability of preschool.

(4) In its consolidated State plan, each SEA must describe how it will use title IV, part A and part B funds, and other Federal funds—

(i) To support the State-level strategies described in paragraph (a)(1) of this section and other State-level strategies, as applicable; and

(ii) To ensure that, to the extent permitted under applicable law and regulations, the processes, procedures, and priorities used to award subgrants under an included program are consistent with the requirements of this section.

(b) *Performance management and technical assistance.* In addition to the requirements in § 299.14(c), each SEA must describe how it will use the information and data described in paragraph (a)(3) of this section to inform review and approval of LEA applications and technical assistance in the implementation of LEA plans.

(c) *Program-specific requirements—*

(1) *Title I, part A.* Each SEA must describe the process and criteria it will use to waive the 40 percent schoolwide

poverty threshold under section 1114(a)(1)(B) of the Act submitted by an LEA on behalf of a school, including how the SEA will ensure that the schoolwide program will best serve the needs of the lowest-achieving students in the school.

(2) *Title I, part C.* In its consolidated State plan, each SEA must describe—

(i) How the SEA and its local operating agencies (which may include LEAs) will—

(A) Establish and implement a system for the proper identification and recruitment of eligible migratory children on a statewide basis, including the identification and recruitment of preschool migratory children and migratory children who have dropped out of school, and how the SEA will verify and document the number of eligible migratory children aged 3 through 21 residing in the State on an annual basis;

(B) Assess the unique educational needs of migratory children, including preschool migratory children and migratory children who have dropped out of school, and other needs that must be met in order for migratory children to participate effectively in school;

(C) Ensure that the unique educational needs of migratory children, including preschool migratory children and migratory children who have dropped out of school, and other needs that must be met in order for migratory children to participate effectively in school, are identified and addressed through the full range of services that are available for migratory children from appropriate local, State, and Federal educational programs; and

(D) Use funds received under title I, part C to promote interstate and intrastate coordination of services for migratory children, including how the State will provide for educational continuity through the timely transfer of pertinent school records, including information on health, when children move from one school to another, whether or not such move occurs during the regular school year;

(ii) The unique educational needs of the State's migratory children, including preschool migratory children and migratory children who have dropped out of school, and other needs that must be met in order for migratory children to participate effectively in school,

based on the State's most recent comprehensive needs assessment;

(iii) The current measurable program objectives and outcomes for title I, part C, and the strategies the SEA will pursue on a statewide basis to achieve such objectives and outcomes;

(iv) How it will ensure there is consultation with parents of migratory children, including parent advisory councils, at both the State and local level, in the planning and operation of title I, part C programs that span not less than one school year in duration consistent with section 1304(c)(3) of the Act;

(v) Its processes and procedures for ensuring that migratory children who meet the statutory definition of "priority for services" are given priority for title I, part C services, including—

(A) The specific measures and sources of data used to determine whether a migratory child meets each priority for services criteria;

(B) The delegation of responsibilities for documenting priority for services determinations and the provision of services to migratory children determined to be priority for services; and

(C) The timeline for making priority for services determinations, and communicating such information to title I, part C service providers.

(3) *Title III, part A.* Each SEA must describe its standardized entrance and exit procedures for English learners, consistent with section 3113(b)(2) of the Act. These procedures must include valid and reliable, objective criteria that are applied consistently across the State. At a minimum, the standardized exit criteria must—

(i) Include a score of proficient on the State's annual English language proficiency assessment;

(ii) Be the same criteria used for exiting students from the English learner subgroup for title I reporting and accountability purposes;

(iii) Not include performance on an academic content assessment; and

(iv) Be consistent with Federal civil rights obligations.

(4) *Title V, part B, subpart 2.* In its consolidated State plan, each SEA must provide its specific measurable program objectives and outcomes related to activities under the Rural and Low-Income School program, if applicable.

(5) *McKinney-Vento Education for Homeless Children and Youths*

*program.* In its consolidated State plan, each SEA must describe—

(i) The procedures it will use to identify homeless children and youths in the State and assess their needs;

(ii) Programs for school personnel (including liaisons designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Act, principals and other school leaders, attendance officers, teachers, enrollment personnel, and specialized instructional support personnel) to heighten the awareness of such school personnel of the specific needs of homeless children and youths, including such children and youths who are runaway and homeless youths;

(iii) Its procedures to ensure that—

(A) Disputes regarding the educational placement of homeless children and youths are promptly resolved;

(B) Youths described in section 725(2) of the McKinney-Vento Act and youths separated from the public school are identified and accorded equal access to appropriate secondary education and support services, including by identifying and removing barriers that prevent youths described in this paragraph from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school policies;

(C) Homeless children and youths have access to public preschool programs, administered by the SEA or LEA, as provided to other children in the State;

(D) Homeless children and youths who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities; and

(E) Homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, and local nutrition programs; and

(iv) Its strategies to address problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays and retention, consistent with section 722(g)(1)(H) and (I) of the McKinney-Vento Act.

(Authority: 20 U.S.C. 1221e-3, 6311(d), (g), 6394, 6823, 7113(c), 7842; 42 U.S.C. 11432(g))

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