

CCD Education Task Force Comments

Proposed Rulemaking: Title I – Improving The Academic Achievement of the Disadvantaged

Department of Education

Office of Elementary and Secondary Education

SECTION	CURRENT STATUTE AND REGULATION	PROPOSED REGULATION	COMMENTS/RECOMMENDATIONS
<p>200.2 State responsibilities for assessment</p>	<p>Statute: Section 1111(b)(3)(C)(vi) of the ESEA states that assessments must involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding.</p> <p>Current Regulations: Section 200.2(b)(7) of the Title I regulations essentially repeats the statutory language.</p>	<p>Clarification only: does not impose new requirements or require States to change their current assessment systems.</p> <p>Proposed regulatory changes would clarify that, to meet the requirement to use multiple measures, a State may also choose to develop an assessment that relies on a combination of question formats, so long as the assessment reflects the degree of complexity of the cognitive concepts and processes in the State content standards.</p>	<p>CCD supports the changes in this section that makes clear that districts will have the option of using multiple measures in the assessment process. It is especially important, as indicated, that the state’s assessment system measure the full range of cognitive complexity in the state’s academic content standards, and would include items measuring higher order thinking skills as well as knowledge and recall items to assess the depth and breadth of mastery of a particular content domain. CCD supports assessments and accountability based on valid and reliable information from multiple data sources for all students including students with disabilities.</p> <p>RECOMMENDATION: Add to 200.2(b)(7) a new (iii) to clarify and encourage the use of alternate assessments on the grade-level academic achievement standard as proposed in bold:</p> <p>200.2 (b)(7) (7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content, as defined by the State. These measures may include--</p> <ul style="list-style-type: none"> (i) Single or multiple question formats that range in cognitive complexity within a single assessment; and (ii) Multiple assessments within a subject area. <p>(iii) Alternate assessments aligned to the State’s challenging academic content standards.</p>

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			<p>RECOMMENDATION: Amend Sec. 200.2(b)(2) as follows in bold to support proposed regulation 200.2(b)(7).</p> <p>(2) Be designed consistent with the principles of universal design for learning to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency, by</p> <ul style="list-style-type: none"> (i) minimizing the effect of construct-irrelevant factors—such as physical, sensory, learning, or cognitive disabilities, or language barriers—that may interfere with the accuracy of the assessment; and (ii) providing appropriate supports for students to demonstrate the knowledge, skills, and abilities according to the intended learning standards. <p>RATIONALE: CCD supports proposed regulation 200.2(b)(7). This proposed regulation demonstrates that accountability under NCLB does not have to be based on a single measure or form of assessment, while at the same time emphasizing that it is not permissible to use subjective or non-academic measures. Since States complain that there are not sufficient ways to measure student achievement, the regulation should specifically mention that they may use alternate assessments on the grade-level academic achievement standard as a means of providing multiple measures. Very few States have used this option since it was made available.</p> <p>The NPRM does not address Sec. 200.7(b)(2), but it is related to the proposed regulation</p>

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			<p>because it requires assessments to be valid and accessible. Universal Design for Learning creates accessibility by providing a framework for designing assessments using multiple means of expression. If assessments were universally designed, multiple measures of student academic achievement would naturally be incorporated. Unfortunately, many States incorrectly claim their assessments are accessible because there is no standard to use as a yardstick. Universal Design for Learning is tied to a body of research funded by the U.S. Department of Education and provides the standard that is necessary for true accessibility and multiple means of expression.</p>
<p>200.7 Disaggregation of data</p>	<p>Statute: Section 1111(b)(2)(C)(v) of the ESEA requires a State to define AYP so that its annual measurable objectives apply to all students as well as to specific subgroups of students --that is, economically disadvantaged students; students from major racial and ethnic groups; students with disabilities; and LEP students. Section 1111(b)(2)(l) of the ESEA makes clear that, for a school or LEA to make AYP, all students as well as each subgroup of students must meet or exceed the State’s annual measurable objectives. Sections 1111(h)(1)(C) and 1111(h)(2) require that States and LEAs report on their report cards academic achievement data disaggregated by these same subgroups. Sections 1111(b)(2)(C) and 1111(h)(1)(C) of the ESEA, however, do not require a State to use such disaggregated data for determining AYP or reporting achievement data by subgroup if the number of students in a subgroup is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student. Current Regulations: Section 200.7(a) prohibits</p>	<p>§200.7 Disaggregation of data. (a) * * * (2)(i) Based on sound statistical methodology, each State must determine the minimum number of students sufficient to-- (A) Yield statistically reliable information for each purpose for which disaggregated data are used; and (B) Ensure that, to the maximum extent practicable, all student subgroups in §200.13(b)(7)(ii) are included, particularly at the school level, for purposes of making accountability determinations. (ii) Each State must revise its Consolidated State Application Accountability Workbook under section 1111 of the Act to include-- (A) An explanation of how the State’s minimum subgroup size meets the requirements of paragraph (a)(2)(i) of this section; (B) An explanation of how other components of the State’s definition of adequate yearly progress (AYP), in addition to the State’s minimum subgroup size, interact to affect the statistical reliability of the data and to ensure the maximum inclusion of all students and student</p>	<p>RECOMMENDATION: Retain the amendments made in Proposed Regulation 200.7(a)(2)(ii) and add the following changes in bold:</p> <p>(ii) Each State must revise its Consolidated State Application Accountability Workbook under section 1111 of the Act to include-- (A) An explanation of how the State's minimum subgroup size meets the requirements of paragraph (a)(2)(i) of this section, that-</p> <p>(1) describes the results of empirical and/or simulation studies used to analyze the considerations related to reliability and inclusion in accountability determinations in paragraph (a)(2)(i) and</p> <p>(2) documents the State’s decision making process based on the results of such analyses for selecting the minimum subgroup size;</p>

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	<p>a State from using disaggregated data for one or more subgroups to report achievement results or to identify schools in need of improvement, corrective action, or restructuring if the number of students in a subgroup is insufficient to yield statistically reliable information. Accordingly, §200.7(a)(2) requires a State, using sound statistical methods, to determine and justify in its State Plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used (e.g., for determining AYP and for reporting subgroup achievement on State and LEA report cards).</p>	<p>subgroups in §200.13(b)(7)(ii); and</p> <p>(C) Information regarding the number and percentage of students and student subgroups in §200.13(b)(7)(ii) excluded from school-level accountability determinations.</p> <p>(iii) No later than six months following the effective date of this regulation, each State must submit a revised Consolidated State Application Accountability Workbook in accordance with paragraph (a)(2)(ii) to the Department for technical assistance and peer review under the process established by the Secretary under section 1111(e)(2) of the Act.</p>	<p>(B) An explanation of how other components of the State's definition of adequate yearly progress (AYP), in addition to the State's minimum subgroup size, interact to affect the statistical reliability of the data and to ensure the maximum inclusion of all students and student subgroups in Sec. 200.13(b)(7)(ii);</p> <p>(C) Information regarding the number and percentage of students and student subgroups excluded from school-level subgroup accountability determinations, with that information disaggregated by each subgroup described in Sec. 200.13(b)(7)(ii); and</p> <p>(D) Information regarding the number and percentage of subgroups that were counted as having made AYP because of the safe harbor provision or confidence interval, with that information disaggregated by each subgroup described in Sec. 200.13(b)(7).</p> <p>(iii) No later than six months following the effective date of this regulation, each State must submit a revised Consolidated State Application Accountability Workbook in accordance with paragraph (a)(2)(ii) to the Department for technical assistance and peer review under the process established by the Secretary under section 1111(e)(2) of the Act.</p> <p>(iv) The information in paragraph (a)(2)(ii)(C) and (D) of this section shall also be included in the State and LEA report cards under Section 1111(h) of the Act, with the LEA report card reporting the information for the LEA as a whole and for each school.</p> <p>RATIONALE: The justification that a State provides for selecting its minimum subgroup size must reflect the emphasis that the proposed regulation is placing on balancing</p>

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			<p>statistical reliability with the maximum inclusion of all students and subgroups in every aspect of the AYP determination. Therefore, CCD has added some additional language describing the elements that should be included in the State's explanation of how the State's minimum subgroup size meets the requirements of Section 200.7 (a)(2)(i).</p> <p>Transparency is also critically important. We strongly support the requirement in the proposed regulation that requires information on the number and percentage of students and subgroups excluded from school-level accountability to be reported. We recommend changing the wording to "school-level <u>subgroup</u> accountability." Since the students in the excluded subgroup are included in the overall school AYP calculation it may cause confusion to require reporting only when students are excluded from school-level accountability. In addition, this information should be disaggregated by subgroup since some groups may exceed minimum subgroup size and others won't.</p> <p>It is important to note that the exclusion of students and subgroups is not the only effect of the various components States can add to their AYP definition. The safe harbor rule, confidence intervals, and other components of the State's definition of AYP do not exclude students or subgroups from school-level subgroup accountability, but they do allow subgroups to make AYP even when the proficiency rate based on actual student scores would not have been sufficient. This is especially true when these elements of AYP are combined. We have made a reporting recommendation that would provide transparency in these instances. We would like to note that confidence intervals that do not exceed 95%, when combined with</p>

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			<p>minimum subgroup sizes between 10 and 20, are better statistical tools than higher minimum subgroup sizes, but the public still should be informed of their effect on the AYP determination. Confidence intervals that exceed 95% are unwarranted.</p> <p>The preamble to the proposed regulation states that making information available through a State's Accountability Workbook enables the public to gain a better understanding of how schools are being held accountable for the performance of their students and student subgroups. This is a good step toward transparency, but the reality is that very few members of the public read the complex State Accountability Workbooks. Therefore, we recommend that the information on the exclusion of students from accountability due to minimum subgroup size and the effect of the safe harbor and confidence intervals should also be reported in the State and District report cards, which are more likely to be read by the public.</p>
<p>200.11 Participation in NAEP.</p>	<p>Statute: Section 1111(c)(2) of the ESEA requires States to participate in the National Assessment of Educational Progress (NAEP) in reading and mathematics for the fourth and eighth grades as a condition of receiving Title I funds, and section 1112(b)(1)(F) of the ESEA requires districts, if selected, to participate in the NAEP. The general authorization for the NAEP requirements is outlined in section 411 of the National Education Statistics Act of 1994 (20 U.S.C. 9010).</p> <p>Current Regulations: Section 200.11 requires each State that receives funds under Title I, part A of the ESEA to participate in biennial State NAEP academic assessments of fourth and eighth grade reading and mathematics. It</p>	<p>(c) Report cards. Each State and LEA must report on its annual State or LEA report card, respectively, the most recent available academic achievement results in each grade assessed, in the aggregate and disaggregated, on the State's NAEP reading and mathematics assessments under paragraph (a) of this section.</p>	<p>RECOMMENDATION: Amend proposed regulation 200.11(c) as follows in bold:</p> <p>(c) Report cards. Each State and LEA must report on its annual State or LEA report card, respectively, the most recent available academic achievement results in each grade assessed, in the aggregate and disaggregated by each subgroup described in Sec. 200.13(b)(7)(ii), on the State's NAEP reading and mathematics assessments under paragraph (a) of this section and report, to the best extent possible, the participation rate of students with disabilities.</p> <p>RATIONALE: We added the list of subgroups</p>

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	<p>also requires an LEA that receives these funds to participate, if selected, in the State NAEP assessments.</p>		<p>in Sec. 200.13(b)(7)(ii) to clarify that the disaggregation of the data is by subgroup. This reference appears in other places where disaggregation is required. In the interest of transparency, the regulations should be also be amended to provide that State and LEA report cards will indicate the participation rate for students with disabilities, to the best extent possible on the NAEP. We support this proposed regulation because it is important for the public to see the discrepancy between the proficiency rate on their State’s NCLB assessments and their results on the NAEP. However, the participation rate of students with disabilities in the NAEP is a concern. We urge the Secretary to take this opportunity to examine how NAEP can become more representative of ALL students, including students with disabilities.</p>
<p>200.19 Other academic indicators <i>(Grad rate requirements)</i></p>			<p>CCD has submitted separate comments on this section.</p>
<p>200.20 Making adequate yearly progress <i>(growth models)</i></p>	<p>Statute and current regulations set out the requirements for calculating AYP using the “status model” or “safe harbor” provision.</p>	<p>Establishes the criteria that a State must meet in order to receive a waiver to use a growth model (individual student academic achievement) as part of the state’s definition of AYP. Same as criteria for growth model pilots, including the provision that proficient level are not based on individual student background characteristics ...</p>	<p>RECOMMENDATION: CCD supports the addition of a growth model option in Sec. 200.20(h)(2) that incorporates student academic growth in the state’s definition of AYP.</p> <p>ADDITION TO CRITERIA: In addition to the current criteria established by the Secretary, we recommend the addition of the following:</p> <ul style="list-style-type: none"> • Increasing scientifically based research in the development of growth models that would meet the requirements. • Including an expert in assessments for students with disabilities on the peer review committee for proposed growth models.

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			<ul style="list-style-type: none"> • Requiring states to ensure informed stakeholder input in the development of growth models. • Requiring that students who take assessments on either alternate academic achievement standards or modified academic achievement standards must be included in the growth model, not just in the overall accountability system. <p>RATIONALE: Any growth model that might become part of AYP determinations should be subject to the same criteria established by the Secretary for the Growth Model pilot programs, with the additions recommended above. These criteria are particularly important in protecting students with disabilities from being held to lower or different standards and expectations than other students. For students with disabilities it is critical for assessment to be conducted in consideration of the baseline ability of a student and of progress made on standards-based Individualized Education Program goals.</p> <p>RECOMMENDATION: Require a report on the lessons learned from the original 10 States with approved growth models.</p> <p>RATIONALE: There are schools that are working diligently to facilitate the growth of all students, including students with disabilities, toward proficiency on state standards. Schools should be recognized for the effort if that effort results in significant academic growth. While incorporating growth models into NCLB accountability for all students appears to have many desirable characteristics, we believe much remains to be learned from the pilots which are widely</p>

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			<p>diverse in their approach. We urge the Secretary to require analyses of the pilots that will share both lessons learned and best practices. The Secretary should make technical assistance and training available as states develop the capacity to implement growth models to better capture the academic growth and achievements for all students.</p> <p>RECOMMENDATION: Amend Sec. 200.2 (h)(2) as follows in bold:</p> <p>(2) A State's policy for incorporating student academic growth in the State's definition of AYP must--</p> <p>(vii) Describe how the State's annual growth targets fit into the State's accountability system in a manner that ensures that the system is coherent and that incorporating student academic growth into the State's definition of AYP does not dilute accountability and is valid for students taking alternate assessments on grade-level, modified and alternate academic achievement standards,</p> <p>Rationale: In order to be true to the tenets of NCLB it is critically important to ensure that all the components of a State's accountability system, including the growth model, are valid regardless of the type of assessment a student takes.</p>
<p>200.22 National Technical Advisory Council</p>	<p>Statute: Section 1111(e) of the ESEA requires the Secretary to establish a peer review process to assist in the review of State Plans. Current Regulations: There are no current regulations related to this statutory requirement.</p>	<p>(a) To provide advice to the Department on technical issues related to the design and implementation of standards, assessments, and accountability systems, the Secretary shall establish a National Technical Advisory Council (hereafter referred to as the "National TAC"), which shall be governed by the provisions of the Federal Advisory Committee Act (FACA)</p>	<p>RECOMMENDATION: Amend proposed regulation Sec. 200.22(b)(2) as follows in bold and use part of the current paragraph (b)(2) to create a new paragraph (b)(5).</p> <p>(2) The National TAC shall be composed of 10 to 15 members with several members having expertise on assessment and</p>

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		<p>(P.L. 92-463, as amended; 5 U.S.C. App.).</p> <p>(b)(1) The members of the National TAC must include persons who have knowledge of and expertise in the design and implementation of educational standards, assessments, and accountability systems, including experts with technical knowledge related to statistics and psychometrics.</p> <p>(2) The National TAC shall be composed of 10 to 15 members who may meet as a whole or in committees, as the Secretary may determine.</p> <p>(3) The Secretary shall, through a notice published in the Federal Register--</p> <p>(i) Solicit nominations from the public for members of the National TAC; and</p> <p>(ii) Publish the list of members, once selected.</p> <p>(4) The Secretary shall screen nominees for membership on the National TAC for potential conflicts of interest to prevent, to the extent possible, such conflicts, or the appearance thereof, in the National TAC's performance of its responsibilities under this section.</p> <p>(c) The Secretary shall use the National TAC to provide its expert opinions on matters that arise during the State Plan review process.</p> <p>(d) The Secretary shall prescribe and publish the rules of procedure for the National TAC.</p>	<p>accountability issues related to students with disabilities, including low incidence disabilities.</p> <p>(5) The National TAC may meet as a whole or in committees, as the Secretary may determine.</p> <p>RATIONALE: CCD supports proposed regulation 200.22. The National TAC will have a positive effect on the NCLB policy decision-making process, if it is permitted to have a robust advisory role. In order for the National TAC to provide meaningful advice on accountability and assessments issues related to students with disabilities, the proposed regulation must be amended to require at least one member of the committee to have expertise in special education issues, including issues related to alternate assessments on alternate academic achievement standards. These alternate assessments present many unique challenges that must be addressed by the National TAC.</p>
<p>200.32 Identification for school improvement</p>	<p>Statute and Current Regulations: Section 1116(b)(1)(A) of the ESEA and §200.32(a)(1) require an LEA to identify a school for improvement if it does not make AYP, "as defined . . . under section 1111(b)(2)," for two consecutive years. Section 1116(c)(3) of the ESEA and §200.50(d)(1) contain a similar requirement for identifying LEAs for improvement. Under section 1111(b)(2)(I) of the ESEA and §200.20, a school or LEA makes AYP if: (1) all students and each subgroup of students under §200.13(b)(7)(ii) meet or exceed the State's separate annual measurable objectives (AMOs) for reading/language arts and math, (2) the school</p>	<p>CLARIFICATION ONLY</p> <p>(a)(1)(i) * * *</p> <p>(ii) In identifying schools for improvement, an LEA--</p> <p>(A) May base identification on whether a school did not make AYP because it did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for two consecutive years; but</p> <p>(B) May not limit identification to those schools that did not make AYP only because they did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for the same subgroup under §200.13(b)(7)(ii) for two consecutive years.</p>	<p>RECOMMENDATION: Retain proposed regulations for Sec. 200.32 and 200.50</p> <p>RATIONALE: These proposed regulations will ensure accountability in each subject for all the subgroups, which is a primary purpose of NCLB and provides good clarification in light of the differentiated accountability pilot program.</p>

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	<p>or LEA meets or exceeds the State’s other academic indicators, and (3) not less than 95 percent of all students and those in each subgroup identified in §200.13(b)(7)(ii) take the State’s assessments. A school or LEA may also make AYP through the “safe harbor” provisions described previously in this notice. Under current policy, the Department permits the identification of schools and LEAs for improvement if the school or LEA did not make AYP because it did not meet the AMO in the same subject or academic indicator for two consecutive years. So, for example, if a school did not make AYP because it did not meet the AMO for math for two consecutive years, the school would be identified for improvement. On the other hand, if a school, in the first year, did not make AYP because it did not meet the AMO in math but met the AMO in reading/language arts, and then, in the second year, did not make AYP because it did not meet the AMO in reading/language arts but met the AMO in math, that school would not be identified for improvement.</p> <p>The Department, however, does not permit an LEA or a State to limit the identification of schools and LEAs for improvement to only those schools and LEAs that did not make AYP because the same subgroup did not meet the AMO in the same subject or meet the same other academic indicator for two consecutive years. So, for example, if a school, in the first year, did not make AYP because the students with disabilities subgroup did not meet the AMO in math, and then, in the second year, the school did not make AYP because the LEP students subgroup did not meet the AMO in math, the LEA must identify that school for improvement. In this example, identification for improvement is based on not meeting the AMO in the same subject, math, not on whether the same subgroup did not meet the AMO.</p>		

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<p>200.37 Notice of identification for improvement, corrective action, or restructuring.</p>	<p>Statute: Section 1116(b)(1)(A) of the ESEA requires LEAs to identify for improvement any Title I school that fails to make AYP for two consecutive years. The identification must occur before the beginning of the school year following the school’s failure to make AYP (section 1116(b)(1)(B)). Section 1116(b)(6) of the ESEA requires an LEA to promptly notify parents of students enrolled in a school identified for improvement, corrective action, or restructuring and to provide them with information regarding what it means to be identified for improvement, corrective action, or restructuring, including an explanation of the parents’ option to transfer their child to another public school or the option to obtain SES for the student. Section 1116(b)(1)(E) requires LEAs to provide students enrolled in a school identified for improvement, corrective action, or restructuring with the option to transfer to another school not later than the first day of the school year following such identification. Section 1116(e)(2)(A) requires LEAs with schools in the second year of improvement, in corrective action, or in restructuring to provide, at a minimum, annual notice to parents of the availability of SES, the identity of approved SES providers of those services that are within the LEA or whose services are reasonably available in neighboring LEAs, and a brief description of the services, qualifications, and demonstrated effectiveness of each of those providers.</p> <p>Current Regulations: Section 200.37(b)(4) and (b)(5) implement the statutory requirements for LEAs to provide notice to parents of public school choice and SES options, respectively.</p>	<p>(b) * * *</p> <p>(4) * * *</p> <p>(iv) The explanation of the available school choices must be made sufficiently in advance of, but no later than 14 calendar days before, the start of the school year so that parents have adequate time to exercise their choice option before the school year begins.</p> <p>(5) * * *</p> <p>(ii) * * *</p> <p>(C) An explanation of the benefits of receiving supplemental educational services.</p> <p>(iii) The annual notice of the availability of supplemental educational services must be--</p> <p>(A) Clear and concise; and</p> <p>(B) Clearly distinguishable from the other information sent to parents under this section.</p> <p>* * * * *</p>	<p>RECOMMENDATION: Retain the proposed regulation for Sec. 200.37.</p> <p>RATIONALE: School choice and supplemental education services have not been as widely used as expected. One of the reasons is that the parents are not receiving school choice notices until after the start of the school year that they may send their children to better-performing public schools in their districts. Also, the information given to parents about supplemental education services (SES) eligibility is not clearly distinguishable from other information that districts provide. The proposed regulations will address these issues.</p>
<p>200.39: Responsibilities resulting from identification for</p>	<p>Statute: Section 1116(b) of the ESEA states that an LEA must identify for school improvement any elementary or secondary school that fails, for two consecutive years, to</p>	<p>10. Section 200.39 is amended by adding a new paragraph (c) to read as follows: §200.39 Responsibilities resulting from identification for school improvement.</p>	<p>RECOMMENDATION: Amend (1) as follows in bold:</p> <p>(1) Beginning with data from the 2007-2008</p>

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<p>school improvement.</p>	<p>make AYP. Specifically, LEAs with Title I schools identified for improvement are responsible for providing public school choice to eligible students (section 1116(b)(1)(E)), consulting with identified schools as they develop a school improvement plan (section 1116(b)(3)), and ensuring the provision of technical assistance as the school develops and implements the school improvement plan (section 1116(b)(4)). For Title I schools in their second year of improvement, the LEA must continue with these actions and, in addition, make SES available to eligible students.</p> <p>Current Regulations: Section 200.39 implements the statutory requirements regarding LEAs' responsibilities for Title I schools identified for improvement.</p>	<p>* * * * *</p> <p>(c) The LEA must prominently display on its Web site, as soon as it becomes available, the following information regarding the LEA's implementation of the public school choice and supplemental educational services requirements of the Act and this part:</p> <p>(1) Beginning with data from the 2007-2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in public school choice.</p> <p>(2) Beginning with data from the 2007-2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in supplemental educational services.</p> <p>(3) For the current school year, a list of supplemental educational services providers approved by the State to serve the LEA and the locations where services are provided.</p> <p>(4) For the current school year, a list of available schools to which students eligible to participate in public school choice may transfer.</p>	<p>school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in public school choice. The data must be disaggregated as required in 1111(b)(2)(C)(v).</p> <p>RECOMMENDATION: Amend (2) as follows in bold:</p> <p>(2) Beginning with data from the 2007-2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in supplemental educational services. The data must be disaggregated as required in 1111(b)(2)(C)(v).</p> <p>RATIONALE: It is important for parents to understand the impact of implementing public school choice and supplemental educational services requirements as it applies to all students AND to the subgroups. (Understanding that students eligible for SES are already contained within the low income group, these data would break down that subgroup into the other required groups.)</p> <p>RECOMMENDATION: Amend the proposed regulation for Sec. 200.39 as follows in bold.</p> <p>(c) The LEA must prominently display on its Web site and require schools to make available in print, as soon as it becomes available, the following information regarding the LEA's implementation of the public school choice and supplemental educational services requirements of the Act and this part:</p> <p>RATIONALE: The information that would be posted on the district's website as a result of</p>

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			this proposed regulation would make it easier for parents with computer access to make informed decisions about school choice and SES. However, many parents will not have access to that information in electronic format. Therefore the schools must be required to make a print version of the list available to parents.
200.43 Restructuring	<p>Statute: Under section 1116(a)(7) of the ESEA, if any school served by an LEA does not make AYP by the end of the second full school year after having been identified for improvement, the LEA must identify the school for corrective action and take one of several specific corrective actions. These may include replacing school staff and instituting a new curriculum. If, after one full school year of corrective action, a school continues not to make AYP, the LEA must identify the school for restructuring and implement a restructuring plan under section 1116(b)(8)(A) of the ESEA. In addition to implementing a restructuring plan, the LEA must continue to provide SES and public school choice to eligible students. Section 1116(b)(8)(B) of the ESEA sets forth the requirements for implementing restructuring plans and requires that, not later than the beginning of the school year following the year in which an LEA implements restructuring, the LEA must implement one of the following alternative governance arrangements for the school consistent with State law:</p> <p>(i) Reopen the school as a public charter school;</p> <p>(ii) Replace all or most of the school staff (which may include the principal) who are relevant to the failure to make AYP; (iii) Enter into a contract with an entity, such as a private management company with a demonstrated record of effectiveness, to operate the public school; (iv) Turn the operation of the school over to the SEA, if permitted under State law and agreed to by</p>	<p>CLARIFYING CHANGES ONLY</p> <ul style="list-style-type: none"> - RESPONSIVE TO GAO RECOMMENDATIONS; - ANTICIPATING MORE SCHOOLS IN RESTRUCTURING IN COMING YEARS 	<p>RECOMMENDATION: Retain the proposed regulation for Sec. 200.43.</p> <p>RATIONALE: CCD strongly support this proposed regulation because it makes clarifications that strengthen the restructuring requirements, thereby helping schools to make AYP as soon as possible.</p>

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	<p>the State; or (v) Any other major restructuring of the school’s governance arrangement that makes fundamental reforms, such as significant changes in the school’s staffing and governance, to improve student academic achievement in the school, and that has substantial promise of enabling the school to make AYP.</p> <p>Current Regulations: Section 200.43 of the current regulations, for the most part, restates the statutory language. The regulations also clarify that a school must continue to implement its restructuring plan until it has made AYP for two consecutive years.</p>		
<p>200.44 Public school choice</p>	<p>Statute: Section 1116(b)(1)(E) requires LEAs to provide students enrolled in a school identified for improvement, corrective action, or restructuring with the option to transfer to another school not later than the first day of the school year following such identification. Current Regulations: Section 200.44 provides that if an LEA identifies a school for improvement, corrective action, or restructuring, the LEA must provide all students attending the school with the option to transfer to another public school served by the LEA. An LEA must offer this option to parents not later than the first day of the school year following the year in which the LEA administered the assessment that resulted in its identification of the school for improvement, corrective action, or restructuring.</p>	<p>Aligns with change at Section 200.37 above</p>	<p>RECOMMENDATION: Amend the proposed regulation for Sec. 200.44 as follows in bold.</p> <p>(a) * * *</p> <p>(2) The LEA must--</p> <p>(i) Offer this option not later than 14 days before the start of the school year following the school year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring; and</p> <p>(ii) Provide timely notice consistent with Sec. 200.37(b)(4).</p> <p>RATIONALE: We agree with the Department’s proposed revision to the school choice provision which would require the LEA to provide parents with adequate time (14 days) prior to the beginning of the school year to exercise their option of changing schools from one identified as needing improvement or restructuring, to another school within the district that has met AYP requirements. However, the proposed regulation for Sec. 200.37(b)(4) requires that an explanation of the available</p>

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			<p>school choices must be made sufficiently in advance of, but no later than 14 calendar days before, the start of the school year so that parents have adequate time to exercise their choice option before the school year begins. This 14 day advance notification is meaningless if the current wording in the proposed regulation for Sec. 200.44 remains intact. This proposed regulation allows the district to offer the school choice option as late as the first day of the school year. Both provisions should be aligned to ensure timely notification.</p>
<p>200.47 SEA responsibilities for supplemental educational services.</p>	<p>Statute: Section 1116(e)(1) of the ESEA requires LEAs to arrange for the provision of SES to eligible students from a provider with a demonstrated record of effectiveness. A provider is defined in section 1116(e)(12)(B) as a nonprofit entity, for-profit entity, or LEA that (1) has a demonstrated record of effectiveness in increasing student academic achievement; (2) is capable of providing SES that are consistent with the instructional program of the LEA and the academic standards described in section 1111 of the ESEA; and (3) is financially sound. Section 1116(e)(3)(A) of the ESEA requires an LEA to develop, with the parents of a child participating in SES and the provider, an agreement that includes a statement of specific achievement goals for the student, a description of how the student’s progress will be measured, and a timetable for improving achievement. Section 1116(e)(3)(C) also requires that this agreement be terminated if the provider is unable to meet the goals and timetables specified in the agreement. Section 1116(e)(4)(B) of the ESEA requires States to develop and apply, in the selection of providers, objective criteria that are based on a demonstrated record of effectiveness in increasing the academic proficiency of students in subjects relevant to meeting the State’s academic content and</p>	<p>Strengthens the approval and monitoring of SES providers, adds requirement for SES to be “research-based,” evidence of increasing students’ academic proficiency.</p> <p>3) For the current school year, a list of supplemental educational services providers approved by the State to serve the LEA and the locations where services are provided.</p>	<p>RECOMMENDATION: Add a new paragraph (b)(4) to the proposed regulation for Sec. 200.47.</p> <p>(4) The SEA must ensure that there are an adequate number of qualified providers to meet the needs of students with disabilities and that these providers have documentation that their staff are trained on strategies for teaching students with disabilities, including students with low incidence disabilities.</p> <p>RATIONALE: CCD strongly supports the new requirements in the proposed regulation for Sec. 200.47 regarding State approval and monitoring of SES providers. However, SES providers must be able to meet the needs of students with disabilities and parents must know if such providers are qualified to provided SES. An August, 2006 report by the Government Accountability Office (GAO) found that many challenges exist in attracting providers to serve students with disabilities. See GAO Report: <i>No Child Left Behind Act: Education Actions Needed to Improve Local Implementation and State Evaluations of Supplemental Educational Services</i>, August 2006</p>

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	<p>student achievement standards. Section 1116(e)(4)(D) requires States to develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by approved providers and for withdrawing approval from providers that fail, for two consecutive years, to contribute to increasing the academic proficiency of students served. Section 1116(e)(5)(B) requires providers to ensure that their instructional program is consistent with the instruction provided and content used by the LEA and State, and that it is aligned with State student academic achievement standards.</p> <p>Current Regulations: Section 200.47 repeats the statutory requirements regarding the State’s responsibility to approve SES providers with a demonstrated record of effectiveness, and to develop and apply objective criteria to monitor and withdraw approval of providers. Section 200.47 also requires that, to be approved by an SEA, the provider must agree to ensure that the instruction the provider gives and the content the provider uses are consistent with the instruction provided and the content used by the LEA and the SEA, and are aligned with State student academic achievement standards.</p>		
<p>200.48 Funding for choice-related transportation and supplemental educational services (SES).</p>	<p>Statute and Current Regulations: Section 1116(b)(10) of the ESEA and §200.48(a)(2) require LEAs to spend an amount equal to 20 percent of their Title I, Part A allocations, unless a lesser amount is needed, to comply with all requests for SES and to provide transportation, or pay for the transportation costs, for students exercising the public school choice option under the ESEA. An LEA may use Title I funds to pay for the costs to implement SES and public school choice, including outreach to parents; however, under §200.48(a)(2)(iii)(B), the LEA may not count</p>	<p>§200.48 Funding for choice-related transportation and supplemental educational services.</p> <p>(a) * * *</p> <p>(2) * * *</p> <p>(iii) * * *</p> <p>(C) The LEA may count in the amount the LEA is required to spend under paragraph (a) of this section its costs for outreach and assistance to parents concerning their choice to transfer their child or to request supplemental educational services, up to an amount equal to 0.2 percent of its allocation under subpart 2 of part A of</p>	<p>RECOMMENDATION: Retain the proposed regulation for Sec. 200.48.</p> <p>RATIONALE: SES and public school choice are meaningless without timely and accurate information that is effectively disseminated. Therefore, it makes sense to allow districts to count the costs associated with providing parent outreach and assistance toward meeting the amount they are required to spend on SES and transportation for public school choice.</p>

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	<p>these costs toward meeting its 20 percent obligation.</p>	<p>Title I of the ESEA. * * * * *</p> <p>(d) Unexpended funds for choice-related transportation and supplemental educational services. (1) If an LEA does not fully meet the requirements in paragraph (a)(2) of this section in a given school year, the LEA must spend the unexpended amount in the subsequent school year on choice-related transportation costs, supplemental educational services, or parent outreach and assistance (consistent with paragraph (a)(2)(iii)(C)) unless the SEA approves the LEA's request to spend a lesser amount based on the SEA's determination that the LEA has demonstrated success in--</p> <p>(i) Partnering with community-based organizations or other groups* to help inform eligible students and their families of the opportunities to transfer or to receive supplemental educational services;</p> <p>(ii) Ensuring that eligible students and their parents had a genuine opportunity to sign up to transfer or to obtain supplemental educational services, including by--</p> <p>(A) Providing timely, accurate notice as required in §§200.36 and 200.37;</p> <p>(B) Ensuring that sign-up forms for supplemental educational services are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the Internet, other media, and communications through public agencies serving eligible students and their families; and</p> <p>(C) Allowing eligible students to sign up to receive supplemental educational services throughout the school year; and</p> <p>(iii) Ensuring that eligible supplemental educational services providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms</p>	<p>RECOMMENDATION: Amend (B) as follows in bold:</p> <p>(B) Ensuring that sign-up forms for supplemental educational services are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the Parent Training and Information Centers funded under IDEA and the Parent Information Resource Centers funded under NCLB, the Internet, other media, and communications through public agencies serving eligible students and their families; and</p>

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		<p>as are available to other groups that seek access to school facilities.</p> <p>(2) The LEA must spend the unexpended funds under paragraph (d)(1) of this section in addition to the funds it is required to spend under paragraph (a)(2) of this section in the subsequent school year.</p>	<p>RATIONALE: The Parent Training and Information Centers and the Parent Information Resource Centers are the only federally funded sources of information for parents. They should be fully utilized to share information broadly with parents about supplemental educational services.</p>
<p>200.50 SEA review of LEA progress.</p>		<p>Aligns with change at §200.32</p>	
<p>200.56 Definition of “highly qualified teacher.”</p>		<p>Proposed §200.56(d) would add a cross-reference to the definition of highly qualified special education teachers in 34 CFR 300.18 of the IDEA regulations.</p>	