DEPARTMENT OF EDUCATION

34 CFR Parts 200, 201, 203, 205, and 212

RIN 1810–AA73

Title I—Helping Disadvantaged Children Meet High Standards

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes to issue a single set of regulations implementing the programs under Title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994. In order to provide maximum flexibility to grantees implementing the programs under Title I, these proposed regulations address only those few provisions for which the Secretary believes rulemaking is absolutely necessary. These proposed regulations would replace the regulations currently found at 34 CFR parts 200, 201, 203, 205 and 212.

DATES: Written comments must be received on or before May 31, 1995.

ADDRESSES: All comments for subparts A, B, and D should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, room 4400, Washington, DC 20202–6132. The Internet address for Part A comments is: TitleI____LEA@ed.gov; Part B: Even____Start@ed.gov; and Part D: Title I____N–D@ed.gov. The fax number for programs under subparts A, B, and D is (202) 260–7764.

All comments concerning programs under subpart C should be addressed to Bayla White, Director, Migrant Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, room 4100, Washington, DC 20202–6135. The Internet address for programs under subpart C is Title I—Migrant@ed.gov. The fax number for programs under subpart C is (202) 205–0089.

All comments concerning provisions under subpart E may be addressed to the addresses above for subparts A or C, depending on the nature of the comments.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: For subparts A and E, Wendy Jo New, Telephone: (202) 260–0982; for subpart B, Patricia McKee, Telephone: (202) 260–0991; for subpart D, Paul Brown, Telephone: (202) 260–0976: Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, room 4400, Washington, DC 20202–6132.

For subparts C and E, James English, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, room 4100, Washington, DC 20202–6135. Telephone: (202) 260–1394.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The 1994 reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) revised extensively Federal elementary and secondary education programs to help ensure that all children acquire the knowledge and skills they will need to succeed in the 21st century. Under the reauthorized ESEA, Federal education programs for the first time are designed to work together with, rather than separately from, one another. In addition, rather than operating apart from the broader education that children receive, the ESEA reinforces State and community reform efforts geared to challenging State standards, particularly those initiated or supported by the Goals 2000: Educate America Act. In fact, all of the major ESEA programs are redesigned to support comprehensive State and local reforms of teaching and learning and ensure that all children—whatever their background and whatever school they attend—can reap the benefit of those reforms.

As the largest by far of all ESEA programs, Title I is the centerpiece of the ESEA's efforts to help the neediest schools and students reach the same challenging standards expected of all children. Effective July 1, 1995, the four Title I programs—the basic program in local educational agencies (LEAs) (Part A), the Even Start Family Literacy program (Part B), the Migrant Education Program (Part C), and the Neglected, Delinquent, and At-Risk Youth program (Part D)—are designed to work together in support of this common purpose. Moreover, the programs embrace the same fundamental new strategies to help ensure that the intended beneficiaries are not left behind in State and local efforts to promote higher standards. These strategies include: a schoolwide focus on improving teaching and learning, strong program coordination by LEAs, flexibility at the local level combined with clear accountability for results, more focused targeting of resources on the neediest schools, and stronger partnerships between schools and communities to support higher achievement for all children.

The Secretary proposes to issue one set of regulations for all Title I programs that is consistent with the U.S. Department of Education's (Department) new principles for regulating: to regulate only where absolutely necessary and, when regulating, to promote flexible approaches to meeting the requirements of the law. Based on these principles, and in order to give States and localities maximum flexibility to implement statutory provisions, the Secretary proposes a regulatory package for Title I that would eliminate regulations for both Parts B and D of Title I, other than definitions (34 CFR parts 212 and 203 respectively), as well as for the Migrant Education Coordination Program (34 CFR part 205), and would promulgate few regulations for Parts A and C of Title I, in addition to those required as part of negotiated rulemaking.

Negotiated Rulemaking Process

Section 1601(b) of Title I contains procedural requirements that the Department must follow in developing and issuing regulations to govern the Title I programs. Under section 1601(b)(1), the Secretary was required to obtain advice and recommendations of representatives of Federal, State, and local administrators, parents, teachers, and members of local boards of education involved with the implementation and operation of programs under Title I. In accordance with this requirement, the Department published in the **Federal Register** on October 28, 1994 (59 FR 54372–74) a request for advice and recommendations on regulatory issues under Title I and received over 200 responses. Following the review of these responses, the Secretary submitted policy options on two key issues—''standards, assessment, and accountability'' and ''schoolwide programs''—to a negotiated rulemaking process in accordance with section 1601(b)(3)–(4). Twenty-four individuals, representing Federal, State, and local

administrators, parents, teachers, and members of local boards of education from all geographic regions of the United States, participated in this process. The sessions were held January 11–13 and 18–19, 1995 in Washington, D.C.

The following is a brief synopsis, by topic area, of the major issues and outcomes of the five-day negotiations of the negotiated rulemaking committee (''Committee''). Under the Committee's protocols, ''consensus'' meant unanimous agreement on all issues within a regulatory section. As a result, the Committee reached consensus only on §§ 200.42 and 200.43 of these proposed regulations, which clarify assessment requirements of States and their subgrantees in the Migrant Education Program. However, agreement was reached on a majority of the issues, and language reflecting those agreements is reflected in §§ 200.1–200.6 concerning standards, assessment, and accountability and in § 200.8 concerning schoolwide programs of these proposed regulations.

Standards, Assessment, and Accountability

Part A of Title I aligns instruction, assessment, and accountability procedures under Title I with high-quality State content standards and challenging performance standards. Under section 1111 of Title I, each State must have developed or adopted challenging content and student performance standards to be used by the State, its LEAs, and its schools to carry out Part A. If a State has developed challenging standards for all students, for example, under the Goals 2000: Educate America Act or adopted challenging standards developed by another entity, the State must use those standards for Part A purposes. If a State has not developed or adopted content or performance standards for all students, the State must develop or adopt State content and student performance standards in at least mathematics and reading/language arts for children participating under Part A. These standards must include the same knowledge, skills, and levels of performance expected of all children.

To track the progress of schools and districts, Part A no longer mandates a separate Title I testing system; it relies instead on the State's own assessment system to determine whether students are progressing toward meeting the challenging State standards. Among other things, these assessments must be aligned with the State's content and performance standards; be used for purposes for which they are valid and reliable; be administered at some time during grades 3–5, 6–9, and 10–12; and involve multiple measures of student performance. If a State has developed its own assessment system under the Goals 2000: Educate America Act, for example, or has adopted for its own use assessments developed by another entity, the State must use those assessments for Part A purposes. If a State has not developed or adopted its own State assessment system, the State must develop or adopt a system of assessments for Part A purposes. Until a State has met the requirements concerning assessments in section 1111(b) of Title I, the State may use a transitional set of yearly statewide assessments that will assess the performance of complex skills and challenging subject matter.

Part A refocuses the review of progress from what is currently an evaluation of how individual students are performing to an evaluation of how well schools and LEAs are helping students meet the challenging standards. Each Title I school and LEA must show ''adequate yearly progress'' toward enabling children to meet the State's student performance standards. Adequate yearly progress must be defined by the State in a manner that results in continuous and substantial yearly improvement sufficient to achieve the goal of all participating children meeting the State's proficient and advanced levels of performance, is sufficiently rigorous to achieve that goal within an appropriate timeframe, and links progress primarily to performance on the State's assessment system.

Besides reducing the amount of testing, the changes in Title I assessments and accountability will help link Title I programs to broader State reforms. The changes will also support the efforts of high-poverty schools to raise expectations and enrich their curriculum and instruction well beyond the basic skills programs that have been their traditional focus. In drafting the regulations implementing the statutory provisions on standards, assessment, and accountability, the goals of the Secretary were to ensure that States develop the same system of high-quality standards and assessments for all students, including Title I participants; ensure that States develop effective accountability systems that promote comprehensive planning and improvement; and provide maximum flexibility during the transition period to support ongoing development of standards and assessments.

The following discussion summarizes provisions in the proposed regulations that reflect the Committee's debate on issues concerning standards, assessment, and accountability:

1. Section 200.1(b)(1)(i) requires a State plan to provide ''evidence'' that demonstrates the State has developed or adopted challenging content and student performance standards for all students. At the suggestion of the Committee, further specification is included in § 200.1(b)(1)(i)(B) to require that a State's procedure for setting student performance levels apply recognized professional and technical knowledge for establishing those levels.

2. Section 200.1(b)(2)(ii)(A) clarifies the timeline for a State to develop and field test its assessment system. This section also incorporates the Committee's suggestion that a State be required to describe in its State plan its ''quality benchmarks, timetables, and reporting schedule'' for completing the development and field testing of its assessment system.

3. Section 200.1(b)(2)(iii) requires a State to indicate in its State plan the languages other than English that are spoken by the student population participating in Title I and the languages for which required yearly student assessments are not available and are needed. The Committee added language requiring the State to include in its State plan ''a timetable for progress towards the development of these assessments.''

The Secretary specifically requests comment on § 200.1(b)(2)(iii), which requires a State to indicate in its State plan the languages other than English that are spoken by the student population participating in Title I and the languages for which required yearly student assessments are not available and are needed.

4. The Committee agreed to include statutory language on capacity building in § 200.1(b)(4). As a result, this provision requires each State plan to describe how the SEA will help each LEA and Title I school, as applicable, develop the capacity to implement the components of a schoolwide or targeted assistance program and meet its responsibilities with respect to school improvement. The SEA must also describe other factors it deems appropriate to provide students an opportunity to achieve the knowledge and skills embodied in the State's content standards.

5. Section 1111(b)(2)(B)(ii) of Title I requires that adequate yearly progress be linked primarily to performance on State assessments but permits progress to be established ''in part through the use of other measures.'' At the Committee's suggestion, § 200.3(b)(3) clarifies that ''other measures'' may be

measures ''such as dropout, retention, and attendance rates.''

6. Section 200.4(b)(3)(i)(A) requires that State assessments be used for purposes for which they are valid and reliable. There was considerable debate by the Committee as to whether the proposed regulations should clarify that State assessments are not required to meet one standard definition of valid and reliable. Because some Committee members believed that language to this effect would weaken the requirement that assessments be valid and reliable, the proposed regulations do not go beyond the statutory language in section 1111(b)(3)(C) of Title I.

7. Section 200.4(b)(3)(ii) requires a State, if it uses assessment measures that are not valid and reliable, to include ''sufficient'' information regarding the State's efforts to validate the measures ''and to report the results of those validation studies.'' The Committee agreed to this language.

8. Section 200.4(c)(1) makes clear that a State that has developed or adopted assessments for all students in mathematics and reading/language arts under Goals 2000 or another process must use those assessments to carry out Part A. By so stating, this provision clarifies that assessments in mathematics and reading/language arts are sufficient for accountability purposes under Title I. There was lengthy debate as to whether Title I schools should also be held accountable for other subject areas for which a State develops standards and assessments. Some members of the Committee argued that holding Title I schools accountable for all subject areas for which standards and assessments are developed, even though Title I instruction is not provided in those subject areas, would discourage States from developing standards and assessments in subjects other than mathematics and reading/language arts. Other Committee members argued that, if standards and assessments have been developed in other subjects, Title I schools should be held to the same expectations that the State places on all schools. Agreement was not reached on this issue. Even though the regulations do not require accountability for Part A purposes to be based on subjects other than mathematics and reading/language arts, § 200.4(c)(2) was added to make clear that the State must include students served under Part A in assessments in any other subjects the State has developed or adopted for all children.

The Secretary specifically invites comments on whether accountability under Title I should be based on all subject areas for which a State has developed or adopted standards and assessments for all children.

9. Section 200.4(d)(1)(ii) has been augmented through agreement by the Committee to require States that do not yet have assessments that meet the Title I requirements to develop a timetable and benchmarks, including reports of validity studies, for completing the development and field testing of those assessments.

10. Section 200.4(e)(1) requires that transitional assessments assess the performance of complex skills and challenging subject matter in at least mathematics and reading/language arts and be administered at some time during grades 3 through 5, 6 through 9, and 10 through 12. The Committee agreed with this provision. Section 200.4(e)(2) clarifies that transitional assessments do not need to meet the other requirements that apply to final assessments. After considerable debate, there was not agreement with this provision. Several members of the Committee dissented, arguing that there would be little accountability during the transition period if other requirements of final assessments, such as disaggregation of data and valid and reliable measures, were not included. On the other hand, most of the Committee members argued that transitional assessments should not be encumbered by numerous requirements in order to allow States the flexibility to develop and test their new assessment systems.

11. The Committee reached consensus on §§ 200.42 and 200.43 which clarify requirements of States and their subgrantees in the Migrant Education Program (MEP) relative to assessment and the use of assessment results for improving their MEP programs and projects. These sections clarify that, while the State assessments required under § 200.4 should be used wherever possible, MEP grantees and subgrantees have the flexibility to use other assessment procedures when conditions warrant doing so. These sections spell out those conditions. In any case, assessment results must still be examined and used for the purpose of improving services to migratory children.

Schoolwide Programs

Section 1114 of Title I authorizes a school with a high concentration of children from low-income families to use Part A funds to upgrade the entire educational program in the school. The reauthorization dramatically expanded eligibility for schoolwide programs by reducing the poverty threshold a school must meet from 75 percent poverty to 60 percent poverty for the 1995–1996 school year and to 50 percent poverty in subsequent years. The reauthorization also made a number of critical changes in the schoolwide program authority to help ensure that Part A resources are used to stimulate comprehensive reforms of the entire instructional program provided to all children in these schools. For example, section 1114 permits a schoolwide program to combine Part A funds with other State-administered, non-competitive formula grant programs (other than the Individuals with Disabilities Education Act) and certain Federal discretionary grant programs administered by the Department, as well as with State and local public education funds. In addition, section 1114 requires each schoolwide program to include a number of specific components. A schoolwide program school, for example, must conduct a comprehensive needs assessment of the entire school to determine the performance of its children in relation to the State's standards; implement schoolwide reform strategies that are based on effective means of improving the achievement of children and that address the needs of *all* children in the school, particularly the needs of children who are members of the target population of any other Federal education program that is included in the schoolwide program; use highly qualified professional staff; provide professional development for teachers, aides, and other staff; and implement strategies to increase parental involvement.

The proposed regulations for schoolwide programs are designed to support comprehensive schoolwide programs that benefit all children in schools operating these programs. They include provisions that: emphasize the importance of maximizing the resources available for schoolwide programs; ensure that Federal funds and services are integrated in a comprehensive manner to support the very nature of a schoolwide program; and strike a balance between a school's responsibility for designing and implementing schoolwide programs and an LEA's overall responsibility for providing a high quality education to all students.

The following discussion summarizes provisions in the proposed regulations that reflect the Committee's debate on issues concerning schoolwide programs:

1. Section 200.8(a)(1) states that an ''eligible school, in consultation with its LEA,'' may use Part A funds or services, in combination with other Federal, State, and local funds it receives, to

operate a schoolwide program. By emphasizing that an eligible school makes the decision to operate a schoolwide program, albeit in consultation with its LEA, this language recognizes that a schoolwide program can be successful only if the school community is fully behind that decision. One member of the Committee dissented to this language out of concern that it would abrogate an LEA's ultimate authority for operating its schools.

2. Section 200.8(b)(1) makes clear that a school may not decide to operate a schoolwide program unless the LEA has determined that the school serves a participating attendance area or is a participating school. The Committee agreed to this clarification.

3. Section 200.8(b)(2)(ii) provides LEAs with the flexibility to identify areas and schools as eligible for schoolwide program participation using a measure of poverty that is different from the poverty measure or measures the LEA uses to identify and rank school attendance areas for eligibility and participation. The Committee agreed to include this flexibility in the proposed regulations.

4. Section 200.8(c) emphasizes a school's authority to combine Part A funds with other Federal education program funds in a schoolwide program. If a school combines other Federal program funds, the school is exempt from complying with most statutory or regulatory provisions of those programs if the intent and purposes of the other programs are met. One negotiator argued that the regulations should only exempt schools from complying with specific, limited provisions; otherwise, the intent and purposes of the programs would be jeopardized. This negotiator dissented to the proposed language.

5. Section 200.8(c)(2) emphasizes that the authority to combine funds from other Federal education programs in a schoolwide program also applies to services provided to the school with those funds. This provision recognizes that, under most programs, funds may not be provided directly to schools. Rather, schools may receive services in the nature of staff or instructional equipment and materials. With the one dissent noted above, the Committee agreed to include this provision.

6. Section 200.8(c)(3)(ii)(B)(*1*) implements section 1306(b) of Title I. The proposed language requires a school that combines Part C of Title I funds in its schoolwide program to, ''[i]n consultation with parents of migratory children or organizations representing those parents, first address the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit migratory children to participate effectively in school''; and to ''[d]ocument that services to address those needs have been provided.'' The Committee agreed to this language.

7. Section 200.8(e)(1)(iv)(A) requires that disaggregated assessment results for a schoolwide program be reported only when a State's final assessment system is in place and only when those results are statistically sound. Several Committee members dissented to this provision, arguing that disaggregated data were essential to assessing the specific progress of the target populations included in schoolwide programs. The other Committee members countered, however, that the transition period should not be encumbered with prescriptive requirements to preserve States' flexibility to develop new forms of assessment. Moreover, these members expressed concern that inaccurate conclusions about the progress of target populations would be drawn from disaggregated data if those data were not statistically sound.

8. Section 200.8(f)(1) clarifies that a schoolwide program school is not required to identify particular children as eligible to participate, document that Federal funds benefit only the intended beneficiaries of those funds, or demonstrate that particular services supplement the services regularly provided in the school. This provision applies both to Part A funds and any other Federal education funds included in the schoolwide program. It recognizes that the central purpose of a schoolwide program is to use all available resources to upgrade the entire instructional program for the benefit of all children in the school, rather than focus on specific categorical programs with a singular purpose. One negotiator dissented to this provision out of concern that the intent and purposes of other Federal education programs combined in a schoolwide program would be jeopardized if the school did not have to meet these requirements.

Other Regulations Resulting From Reauthorization Subpart A—Improving Basic Programs Operated by Local Educational Agencies

In addition to the schoolwide program provisions and the provisions related to standards, assessment, and accountability, Subpart A also contains sections on the participation of private school children, within-State allocations, and within-district allocations.

Participation of private school children. Section 1120 of Title I continues the requirement that an LEA provide equitable services to eligible children enrolled in private schools. Because of other changes in Title I, however, some regulatory provisions are necessary to ensure that equitable services are provided. For example, section 1113(c) of Title I requires an LEA to allocate funds to participating school attendance areas or schools on the basis of the *total* number of children from low-income families in each area or school. Section 200.28 of the proposed regulations makes clear that, in calculating the total number of children from low-income families, an LEA must include children from low-income families who attend private schools. The LEA uses the same poverty data, if available, that it uses to count public school children; however, if the same data are not available, comparable data collected through alternative means such as a survey may be used.

Although funds are allocated on the basis of poor children, § 200.10(b) of the proposed regulations makes clear that, as in current practice, private school children eligible to be served are children who reside in a participating public school attendance area and who have educational needs under section 1115(b) of Title I. Section 200.11(a) of the proposed regulations implements the equal expenditure requirement in section 1120(a)(4) of Title I. Under the proposed regulations, an LEA must reserve the funds generated by poor private school children who reside in participating public school attendance areas. In consultation with appropriate private school officials, the LEA may choose one of two options. The LEA may provide services to eligible children in a private school with the funds generated by poor children who attend that school. Alternatively, the LEA may combine the funds generated by poor private school children in all participating areas to create a pool of funds. From this pool, the LEA would provide services to eligible private school children who are in the greatest educational need of those services. Under this option, the services provided to eligible children in a particular private school would not be dependent upon the amount of funds generated by poor children in the school.

Section 200.16(a)(1) of the proposed regulations makes clear that an LEA first uses funds it receives for capital expenses to cover capital expenses it is currently incurring or would incur because of an expected increase in the number of private school children to be served. If an LEA can demonstrate that

its current needs for capital expenses have been meet, the LEA may apply to use capital expense funds to reimburse itself for capital expenses it incurred in past years for which its has not been reimbursed.

Within-State Allocations

Allocation of funds to LEAs. Sections 200.20 and 200.21 of the proposed regulations outline general procedures for a State educational agency (SEA) to use in allocating basic grants, concentration grants, and targeted grants. Under Section 200.20 an SEA may: (1) Make subcounty allocations to LEAs based on county allocations determined by the Secretary (adjusted for amounts reserved by the SEA for State administration and school improvement); or (2) in the case of basic and targeted grants only, allocate funds directly to LEAs without regard to counties when a State has a large number of LEAs that overlap county boundaries. Any SEA wishing to allocate funds directly to LEAs under § 200.20(b) must apply to the Secretary for authorization and obtain approval of the data on the number of children from low-income families it will use in allocating funds. Unlike Chapter 1, however, an SEA in this situation is not limited to using the poverty criteria used in the Federal formula.

Section 200.21(a) requires an SEA to base LEA allocations on the number of children ages 5 through 17 from low-income families and children residing in local institutions for neglected children. Section 200.21(b) gives an SEA the flexibility to use the best available data on the number of children from low-income families. In selecting the best available data, an SEA may use: (1) The factors in the Federal formula, which include census poverty data, data on children in families above poverty receiving payments under the Aid to Families with Dependent Children (AFDC) program, and data on foster children; (2) alternative data that an SEA determines best reflect the distribution of poor children and are adjusted to be equivalent in proportion to the total number of formula children counted under section 1124(c) of Title I (excluding neglected or delinquent children); and (3) data that more accurately target poverty. The SEA, however, must use the same measure of poverty throughout the State for basic grants, concentration grants, and targeted grants.

Finally, § 200.20(c) implements the statutory requirement in situations where an LEA contains two or more counties in their entirety. Beginning in school year 1995–96, an SEA must treat each county as if it were a separate LEA when allocating basic, concentration, and targeted grant funds.

Basic grants. Section 200.22 of the proposed regulations outlines the procedures for allocating basic grants to LEAs. Unlike Chapter 1, the Title I statute requires for school year 1995–96 that an LEA have at least 10 ''formula'' children counted for allocation purposes in order to qualify. In order to qualify in school year 1996–97 and beyond, an LEA must have at least 10 formula children and the number of those children must be greater than two percent of the LEA's total population aged 5 through 17 years. Under the Chapter 1 regulations, an LEA was required only to be located in a county with 10 or more formula children in order to qualify, and the SEA could choose whether to allocate funds to LEAs with less than ten formula children.

Concentration grants. Section 200.23 (a) and (b) of the proposed regulations outlines general procedures for allocating concentration grant funds to LEAs. These procedures are similar to those provided under Chapter 1. To receive concentration grant funds, an LEA must, with certain exceptions, be located in whole or in part in a county that receives a concentration grant allocation from the Secretary. In addition, the number of ''formula'' children in an LEA counted for allocation purposes must exceed 6,500 or 15 percent of the LEA's total population ages 5 through 17. Unlike Chapter 1, however, eligibility for concentration grants is based on current year counts of formula children rather than prior year counts. Section 200.23(c) addresses special situations in which eligible LEAs are located in ineligible counties, eligible counties have no eligible LEAs, and States receive a minimum concentration grant. If eligible LEAs are located in ineligible counties, for example, § 200.23(c)(1) allows an SEA to reserve two percent or less of the concentration grant funds the State receives to make direct payments to such LEAs.

Targeted grants. Section 200.24 provides for how an SEA allocates targeted grant funds to LEAs. Allocations must be based on the same ''formula'' count of children used to allocate basic and concentration grants. To qualify, an LEA must have at least 10 children who were counted for purposes of allocating basic grants, and the number of such children must equal at least five percent of the LEA's total population ages 5 through 17 years. To determine an LEA's allocation, the SEA must compute a weighted child count using the weights outlined in the tables in § 200.24(b) (1) and (2). In weighting each LEA's formula count, the SEA must take the larger of the percent-weighted count or the number-weighted count and apply the weights in steps so that only those children above each threshold receive the higher weight.

Hold-harmless provisions. Section 200.25 outlines the statutory ''hold-harmless'' provisions more clearly. The hold-harmless protection limits the maximum reduction in an LEA's allocation when compared to its prior year's allocation and is applied separately for basic grants, concentration grants, and targeted grants. For school year 1995–96, each LEA is entitled to receive at least 85 percent of its prior year amount for basic grants only. For school year 1996–97, each LEA is entitled to receive 100 percent of its prior year amount for basic and concentration grants. For school year 1997–98, each LEA is entitled to receive a percent of its prior year basic and targeted grants (but not concentration grant) that varies according to the percent the LEA's number of ''formula'' children is of its total population ages 5 through 17. Section 200.25 also makes clear that an LEA must be eligible to receive a basic grant, concentration grant, or targeted grant in order for the respective hold-harmless provisions of this section to apply.

Within-District Allocations

Sections 200.27 and 200.28 of the proposed regulations contain procedures for within-district allocation of Part A funds in order to clarify the changes made in the new act. Unlike Chapter 1 where LEAs allocated funds to schools based on the number and needs of educationally deprived children, Title I directs LEAs to allocate funds to schools on the basis of the number of children from low-income families. Section 200.27 clarifies what funds an LEA may reserve before allocating funds to eligible schools. An LEA must, for example, reserve funds needed to provide comparable services to children in local institutions for neglected children. Where appropriate, the LEA may reserve funds to provide services to homeless children, children in local institutions for delinquent children, and neglected and delinquent children in community-day school programs. An LEA must also reserve funds as are reasonable and necessary to meet the parental involvement requirements in section 1118 of Title I, administer programs for public and private school children, including

capital expenses, and conduct other authorized activities.

Section 200.28 clarifies the requirements in section 1113(c) of Title I concerning how to allocate funds to school attendance areas and schools. Section 200.28(a) makes clear that an LEA must allocate funds to areas and schools, in rank order, on the basis of the total number of children from low-income families in each area or school. In calculating the total number of low-income children, the LEA must include children from low-income families attending private schools, using the same poverty data, if available, as it is using to count public school children. If the same poverty data are not available, however, the LEA may use comparable data collected through alternative means such as a survey.

Under § 200.28(b), an LEA that serves any school below 35 percent poverty must allocate to each participating area or school an amount for each low-income child that is at least 125 percent of the per-pupil amount of funds the LEA received for that year under subpart 2 of Part A. If an LEA serves only areas or schools above 35 percent poverty, however, it does not need to allocate this minimum per-pupil amount. Section 200.28(c) makes clear that an LEA is not required to allocate the same per-pupil amount to each school attendance area and school, provided the LEA allocates higher per-pupil amounts to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

Subpart B—Title I Even Start Family Literacy Program

The President expects to consolidate the Even Start Family Literacy program with other Adult Education and Family Literacy programs beginning in 1996. Statutory provisions are sufficient to govern FY 1995 awards and project operation, without specific program regulations. Therefore, the Even Start regulations found at 34 CFR Part 212 will be removed. However, in order to focus continuation awards under the Migrant Education Even Start Program (MEES), authorized under section 1202(a) of Title I, on migratory children, the Secretary has determined that it is necessary to include a definition of eligible MEES participants in § 200.30 of the proposed regulations.

Subpart C—Title I Migrant Education Program

In order to provide the maximum flexibility to the States implementing the MEP, the proposed MEP regulations contained in §§ 200.40–200.45, which would supersede those now contained in 34 CFR Part 201, only address a limited number of specific areas where the statute's lack of clarity could undermine proper program administration. These regulatory areas are as follows:

(1) *Definitions.* Under prior law, the MEP statute required the Department to maintain the same definitions relating to eligibility to be counted and served as a migratory child as have existed for nearly 20 years. However, because the new law eliminates this statutory freeze on amending the MEP eligibility definitions, the Secretary now proposes to amend the definitions in order to better ensure that those children who receive MEP services are truly migratory. Specifically, § 200.40 clarifies that, to be a migratory worker, a person must move to obtain (or try to obtain) temporary or seasonal agricultural or fishing work as a principal means of livelihood. This change is needed to focus program services on children of persons with an actual, significant dependency on migratory agricultural or fishing work—as opposed to persons who may, from time to time, move across school district lines to perform agricultural or fishing activities for a short time, but who have other occupations and so are not truly migratory workers.

(2) *Clarifications.* In a number of respects, Part C of Title I contains ambiguous or unclear requirements that these proposed regulations clarify. In this regard—

(A) Section 200.41 (*Use of program funds for unique program function costs*) clarifies that, under the new law, MEP funds can still be used to carry out functions at the State level that are unique to the MEP, and provides examples of these functions.

(B) As discussed in the negotiated rulemaking section, § 200.42 (*Responsibilities of SEAs and operating agencies for assessing the effectiveness of the MEP*) clarifies that, while MEP grantees shall, where feasible, use the same assessment measures as are required under the Title I, Part A program, they have the flexibility to use other reasonable measures to examine the effectiveness of their MEPs and projects in those situations where use of the Statewide assessment is not feasible.

(C) Section 200.43 (*Responsibilities of SEAs and operating agencies for improving services to migratory children*) clarifies that, while MEP grantees and subgrantees are not subject to the specific program improvement activities required under Title I, Part A, they still have the basic responsibility to use assessment results to improve the services they provide to migratory children.

Migrant Education Coordination Program

Section 1308 of Title I authorizes the Secretary, in consultation with the States, to make grants or enter into contracts with SEA, LEAs and other entities to improve the interstate and intrastate coordination of migrant education projects among those agencies. The Secretary proposes to delete current regulations as unnecessary at this time. Those regulations primarily contain selection criteria for awarding new grants that are overly complex for the kinds of grant competitions that the Department anticipates conducting for fiscal year 1995. The Secretary believes that selection criteria in Part 75 of the Education Department General Administrative Regulations (EDGAR), or as would be contained in proposals for specific competitions, should be used to make discretionary grants for this program.

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out

Part D, Subpart 1 of Title I provides financial assistance to State agencies for services to neglected or delinquent children in State-supported institutions or community-day programs to help those children meet challenging State content and performance standards. Subpart 2 authorizes SEAs to retain funds generated by children residing in local institutions for delinquent children under Part A of Title I and make subgrants to LEAs with high numbers or percentages of those children. LEAs may use these funds to meet the educational needs of youth in local institutions for delinquent children and adult correctional facilities and for dropout prevention programs that serve students at educational risk. The Secretary proposes to delete the current regulations in 32 CFR Part 203 governing the State Agency Neglected or Delinquent Program and issue regulations only to define the count of eligible children and youth needed to allocate Subpart 1 funds to the States.

Subpart D specifies and defines the counts of eligible children and youth needed to allocate Title I, subpart 1 State agency neglected or delinquent (N or D) funds to the States and defines several terms used in the Title I, subpart 2 local agency program. The definitions in § 200.50 are necessary to ensure that the data used by the Secretary to allocate funds are based on common

definitions. For example, the definition of a regular program of instruction is included to ensure that the children counted are enrolled in educational programs involving classroom instruction supported by State funds. The definitions of institutions for N or D children and youth require that the average length of stay in the institution be at least 30 days. This continues current policy and is designed to ensure that the children counted for allocation purposes are in an institution for a sufficient length of time so that educational services provided by the institution can be effective. Section 200.51 further provides for when the number of N or D children is determined and how that count must be adjusted to reflect the relative length of the school year.

Subpart E—General

State administration and program improvement. Section 200.60 of the proposed regulations outlines procedures for how an SEA reserves funds for State administration and school improvement. When reserving funds for State administration and school improvement under Part A, an SEA must ensure that no LEA receives less than its hold-harmless amounts for basic grants, concentration grants, and targeted grants unless funds are insufficient to meet the hold-harmless amounts and still permit the SEA to reserve the full amount for administration and school improvement. An SEA also must reserve proportionate amounts from each of the State's basic grant, concentration grant, and targeted grant allocations. Section 200.61 indicates that those funds reserved for State administration are to be used for those general administrative activities that are necessary to carry out any of the Title I programs.

Maintenance of Effort. Section 1120A(a) of Title I allows an LEA to receive Part A funds for any fiscal year only if the SEA finds that the LEA has maintained its fiscal effort in accordance with section 14501 of the ESEA—that is, either the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year. Currently, based on the statutory definition of ''current expenditures'', the Chapter 1 regulations require an SEA to exclude from maintenance of effort calculations any expenditures made from funds provided under Chapter 1 and Chapter 2 of Title I of the ESEA. The Secretary proposes in § 200.64(c)(2) to change this provision to exclude any expenditures made from funds provided by the Federal Government for which an LEA is required to account to the Federal Government directly or through the SEA. As a result, an LEA would no longer be responsible for determining effort with respect to Federal education funds that may decrease from one year to the next and over which the LEA does not have control.

Supplement, not supplant. Section 1120A(b)(1)(B) of Title I allows, for the purpose of complying with the supplement, not supplant requirement, an SEA or LEA to exclude supplemental State and local funds expended in any eligible school attendance area or school for programs that meet the requirements of section 1114 or section 1115 of Title I. Section 200.63(c) clarifies under what conditions a program supported with State or local supplemental funds will be considered to meet the requirements of section 1114 or 1115. These conditions also apply to supplemental State and local funds expended under sections 1113(b)(1)(C) and 1113(c)(2)(B) of Title I.

Executive Order 12866

1. Assessment of Costs and Benefits

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

The potential benefits associated with the proposed regulations are clear. Because the Secretary has chosen to regulate on very few statutory provisions, SEAs and LEAs have considerable flexibility in implementing the provisions of Title I to meet their particular needs and circumstances. Moreover, the potential costs associated with the proposed regulations are minimal; they result from specific statutory requirements or have been determined by the Secretary to be necessary for administering the Title I programs effectively and efficiently.

Any burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.* The Secretary has also determined that this regulatory action does not interfere unduly with State and local governments in the exercise of their governmental functions.

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

2. Clarity of the Regulations

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand.

The Secretary invites comment on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interfere with the clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example ''§ 200.1 Contents of a State plan.'') (4) Is the description of the proposed regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FOB–10), Washington, DC, 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs, institutions of higher education, and public or nonprofit private agencies receiving Federal funds under the Title I programs. The proposed regulations would not have a significant economic impact on the small entities affected because the proposed regulations would not impose excessive regulatory burden or require unnecessary Federal supervision. The proposed regulations would impose

minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Section 1116 (a) and (d) requires LEAs and SEAs, respectively, to review the progress of Title I participating schools and LEAs to determine whether they are making adequate progress toward enabling children to meet the State's student performance standards. Sections 200.5 and 200.6 of the proposed regulations address requirements to report the disaggregation of data for school and LEA improvement and for 14,111 respondents, the estimated average annual burden is 564,440 hours.

In order to receive funds for the operation of a schoolwide program, schools must prepare schoolwide program plans, which is addressed in § 200.8(e) of the proposed regulations and section 1114(b)(2) of Title I. Preparation of a one-time plan for 24,244 respondents is estimated to total 744,760 burden hours.

To receive its allocation, a State must submit to the Secretary data on the number of children enrolled in educational programs of State-operated institutions for N or D children, community day programs for N or D children, and adult correctional institutions. It must also submit the October caseload count of children in local institutions for N or D children. Section 200.51 of the proposed regulations addresses this collection of data, which is approved under OMB Control Number 1810–0060 and estimates for 52 respondents an average annual burden of a total of 2,000 hours.

By statute, State educational agencies applying for Title I funds must submit State plans or applications. The Secretary needs and uses the information provided in these program plans and applications to facilitate the Department's oversight of the programs with regard to the grantees' administration of the programs under the statute and regulations, and to ensure financial accountability for the Federal funds. The public reporting burden for the collection of information for these programs has been submitted to OMB on the separate State plan and consolidated application packages, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The public reporting burden for the collection of information for the Migrant Education Coordination Program application will be announced when the Department publishes any notices of proposed priorities for the award of grants under section 1308 of Title I. Section 200.1 of the proposed regulations addresses what a State plan must contain, with respect to standards and assessments, for a State to receive its Part A allocation. The State plan package approved under OMB Control Number 1810–0571 estimates a one-time burden of 80 hours for each of 52 respondents.

Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Wendy Taylor.

Intergovernmental Review

Grants to SEAs for the MEP and grants to SEAs and LEAs for the Migrant Education Coordination Program are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Secretary's specific plans and actions for these programs.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. In particular, the Secretary invites comments on the following two provisions. The Secretary invites comments on § 200.1(b)(2)(iii), which requires a State to indicate in its State plan the languages other than English that are spoken by the student population participating in Title I and the languages for which required yearly student assessments are not available and are needed. The Secretary also invites comments on whether accountability under Title I should be based on all subject areas for which a State has developed or adopted standards and assessments for all children, rather than mathematics and reading/language arts as stated in § 200.4(c)(1).

All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period, in rooms 4400 (subparts A, B, D, and E) and 4100 (subparts C and E), Portals Building, 1250 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of individuals with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs—education, Indians—education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: April 4, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Improving Programs Operated by Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.144, Migrant Education Coordination Program; 84.213, Even Start Family Literacy Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by removing Parts 201, 203, 205, and 212 and revising Part 200 as follows:

Part 201 [Removed]

1. Part 201 is removed.

Part 203 [Removed]

2. Part 203 is removed.

Part 205 [Removed]

3. Part 205 is removed.

Part 212 [Removed]

4. Part 212 is removed.

5. Part 200 is revised to read as follows:

PART 200—TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Standards, Assessment, and Accountability

Sec.

200.1 Contents of a State plan.
200.2 State responsibilities for developing challenging standards.
200.3 Requirements for adequate progress.

200.4 State responsibilities for assessment.
200.5 Requirements for school improvement.
200.6 Requirements for LEA improvement.
200.7 [Reserved]

Schoolwide Programs

200.8 Schoolwide program requirements.
200.9 [Reserved]

Participation of Eligible Children in Private Schools

200.10 Responsibilities for providing services to children in private schools.
200.11 Factors for determining equitable participation of children in private schools.
200.12 Requirements to ensure that funds do not benefit a private school.
200.13 Requirements concerning property, equipment, and supplies for the benefit of private school children.
200.14 [Reserved]

Capital Expenses

200.15 Payments to SEAs for capital expenses.
200.16 Payments to LEAs for capital expenses.
200.17 Use of LEA payments for capital expenses.
200.18–200.19 [Reserved]

Procedures for the Within-State Allocation of LEA Program Funds

200.20 Allocation of funds to LEAs.
200.21 Determination of the number of children eligible to be counted.
200.22 Allocation of basic grants.
200.23 Allocation of concentration grants.
200.24 Allocation of targeted grants.
200.25 Applicable hold-harmless provisions.
200.26 [Reserved]

Procedures for the Within-District Allocation of LEA Program Funds

200.27 Reservation of funds by an LEA.
200.28 Allocation of funds to school attendance areas and schools.
200.29 [Reserved]

Subpart B—Even Start Family Literacy Programs

200.30 Migrant Education Even Start program definition.
200.31–200.39 [Reserved]

Subpart C—Migrant Education Program

200.40 Program definitions.
200.41 Use of program funds for unique program function costs.
200.42 Responsibilities of SEAs and operating agencies for assessing the effectiveness of the MEP.
200.43 Responsibilities of SEAs and operating agencies for improving services to migratory children.
200.44 Use of MEP funds in schoolwide projects.
200.45 Responsibilities for participation of children in private schools.
200.46–200.49 [Reserved]

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out

200.50 Program definitions.
200.51 SEA counts of eligible children.
200.52–200.59 [Reserved]

Subpart E—General Provisions

200.60 Reservation of funds for State administration and school improvement.
200.61 Use of funds reserved for State administration.
200.62 [Reserved]
200.63 Supplement, not supplant.
200.64 Maintenance of effort.
200.65 Definitions.
200.66–200.69 [Reserved]

Authority: 20 U.S.C. 6301–6514, unless otherwise noted.

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Standards, Assessment, and Accountability

§ 200.1 Contents of a State plan.

(a) (1) A State that desires to receive a grant under this subpart shall submit to the Secretary a plan that meets the requirements of this section.

(2) A State plan must be—

(i) Developed with broad-based consultation throughout the planning process with local educational agencies (LEAs), teachers, pupil services personnel, other staff, parents, and administrators, including principals;

(ii) Developed with substantial involvement of the Committee of Practitioners established under section 1603(b) of the Elementary and Secondary Education Act of 1965, as amended (Act), and continue to involve the Committee in monitoring the plan's implementation; and

(iii) Coordinated with other plans developed under the Act, the Goals 2000: Educate America Act, and other acts, as appropriate, consistent with section 14307 of the Act.

(3) In lieu of a State plan under this section, a State may include programs under this part in a consolidated State plan submitted in accordance with section 14302 of the Act.

(b) A State plan must address the following:

(1) *Challenging standards.* The State plan must include—

(i) Evidence that demonstrates that—

(A) The State has developed or adopted challenging content and student performance standards for all students in accordance with § 200.2; and

(B) The State's procedure for setting the student performance levels applies recognized professional and technical knowledge for establishing the student performance levels; or

(ii) The State's strategy and schedule for developing or adopting by the beginning of the 1997–1998 school year—

(A) Challenging content and student performance standards for all students in accordance with § 200.2(b); or

(B) Content and student performance standards for elementary and secondary school children served under this subpart in accordance with § 200.2(c), if the State will not have developed or adopted content and student performance standards for all students by the 1997–1998 school year or does not intend to develop such standards.

(iii) For subjects in which students will be served under this subpart but for which a State has no standards, the State plan must describe the State's strategy for ensuring that those students are taught the same knowledge and skills and held to the same expectations as are all children.

(2) *Assessments.* The State plan must—

(i) Demonstrate that the State has developed or adopted a set of high-quality yearly student assessments, including assessments in at least mathematics and reading/language arts, in accordance with § 200.4, that will be used as the primary means of determining the yearly performance of each school and LEA served under this subpart in enabling all children participating under this subpart to meet the State's student performance standards; or

(ii) If a State has not developed or adopted assessments in at least mathematics and reading/language arts in accordance with § 200.4—

(A) Describe the State's quality benchmarks, timetables, and reporting schedule for completing the development and field-testing of those assessments by the beginning of the 2000–2001 school year; and

(B) Describe the transitional set of yearly statewide assessments the State will use to assess students' performance in mastering complex skills and challenging subject matter; and

(iii)(A) Identify the languages other than English that are spoken by the student population participating under this subpart; and

(B) Indicate the languages for which yearly student assessments that meet the requirements of this section are not available and are needed and develop a timetable for progress towards the development of these assessments.

(3) *Adequate yearly progress.* The State plan must—

(i) Demonstrate, based on the assessments described under § 200.4, what constitutes adequate yearly progress toward enabling all children to meet the State performance standards of—

(A) Any school served under this subpart; and

(B) Any LEA that receives funds under this subpart; or

(ii) For any year in which a State uses transitional assessments under § 200.4(e), describe how the State will identify schools under § 200.5 and LEAs under § 200.6 in accordance with § 200.3.

(4) *Capacity building.* Each State plan shall describe—

(i) How the State educational agency (SEA) will help each LEA and school affected by the State plan to develop the capacity to comply with each of the requirements of sections 1112(c)(1)(D), 1114(b), and 1115(c) of the Act that is applicable to the LEA and school; and

(ii) Other factors the State deems appropriate, which may include opportunity-to-learn standards or strategies developed under the Goals 2000: Educate America Act, to provide students an opportunity to achieve the knowledge and skills described in the challenging content standards developed or adopted by the State.

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

§ 200.2 State responsibilities for developing challenging standards.

(a) *Standards in general.* (1) A State shall develop or adopt challenging content and student performance standards that will be used by the State, its LEAs, and its schools to carry out this subpart.

(2) Standards under this subpart must include—

(i) Challenging content standards in academic subjects that—

(A) Specify what children are expected to know and be able to do;

(B) Contain coherent and rigorous content; and

(C) Encourage the teaching of advanced skills; and

(ii) Challenging student performance standards that—

(A) Are aligned with the State's content standards;

(B) Describe two levels of high performance—proficient and advanced—that determine how well children are mastering the material in the State's content standards; and

(C) Describe a third level of performance—partially proficient—to provide complete information to measure the progress of lower-performing children toward achieving to the proficient and advanced levels of performance.

(b) *Standards for all children.* A State that has developed or adopted content standards and student performance standards for all students under Title III of the Goals 2000: Educate America Act or under another process, or will develop or adopt such standards by the beginning of the 1997–1998 school year, shall use those standards, modified, if necessary, to conform with the requirements in paragraph (a) of this section and § 200.3, to carry out this subpart.

(c) *Standards for children served under this subpart.* (1) If a State will not have developed or adopted content and student performance standards for all students by the beginning of the 1997–1998 school year, or does not intend to develop those standards, the State shall develop content and student performance standards for elementary and secondary school children served under this subpart in subject areas as determined by the State, but including at least mathematics and reading/language arts. These standards must—

(i) Include the same knowledge, skills, and levels of performance expected of all children;

(ii) Meet the requirements in paragraph (a) of this section and § 200.3; and

(iii) Be developed by the beginning of the 1997–1998 school year.

(2) If a State has not developed content and student performance standards in mathematics and reading/language arts for elementary and secondary school children served under this subpart by the beginning of the 1997–1998 school year, the State shall then adopt a set of standards in those subjects such as the standards contained in other State plans the Secretary has approved.

(3) If and when a State develops or adopts standards for all children, the State shall use those standards to carry out this subpart.

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

§ 200.3 Requirements for adequate progress.

(a) Except as provided in paragraph (c) of this section, each State shall determine, based on the State assessment system described in § 200.1, what constitutes adequate yearly progress of—

(1) Any school served under this subpart toward enabling children to meet the State's student performance standards; and

(2) Any LEA that receives funds under this subpart toward enabling children in schools served under this subpart to meet the State's student performance standards.

(b) Adequate yearly progress must be defined in a manner that—

(1) Results in continuous and substantial yearly improvement of each school and LEA sufficient to achieve the goal of all children served under this subpart, particularly economically disadvantaged and limited-English proficient children, meeting the State's proficient and advanced levels of performance;

(2) Is sufficiently rigorous to achieve that goal within an appropriate timeframe; and

(3) Links progress primarily to performance on the State's assessment system under § 200.4, while permitting progress to be established in part through the use of other measures, such as dropout, retention, and attendance rates.

(c) For any year in which a State uses transitional assessments under § 200.4(e), the State shall devise a procedure for identifying schools under § 200.5 and LEAs under § 200.6 that relies on accurate information about the continuous and substantial yearly academic progress of each school and LEA.

(Authority: 20 U.S.C. 6311(b)(2), (7)(B))

§ 200.4 State responsibilities for assessment.

(a) Each State shall develop or adopt a set of high-quality yearly student assessments, including assessments in at least mathematics and reading/language arts, that will be used as the primary means of determining the yearly performance of each school and LEA served under this subpart in enabling all children participating under this subpart to meet the State's student performance standards.

(b) Assessments under this section must meet the following requirements:

(1) Be the same assessments used to measure the performance of all children, if the State measures the performance of all children.

(2)(i) Be aligned with the State's challenging content and student performance standards; and

(ii) Provide coherent information about student attainment of the State's content and student performance standards.

(3)(i)(A) Be used for purposes for which the assessments are valid and reliable; and

(B) Be consistent with relevant, nationally recognized professional and technical standards for those assessments.

(ii) Assessment measures that do not meet these requirements may be included as one of the multiple measures if the State includes in its

State plan sufficient information regarding the State's efforts to validate the measures and to report the results of those validation studies.

(4) Measure the proficiency of students in the academic subjects in which a State has adopted challenging content and student performance standards.

(5) Be administered at some time during—

(i) Grades 3 through 5;

(ii) Grades 6 through 9; and

(iii) Grades 10 through 12.

(6) Involve multiple approaches within an assessment system with up-to-date measures of student performance, including measures that assess complex thinking skills and understanding of challenging content.

(7) Provide for—

(i) Participation in the assessment of all students in the grades being assessed;

(ii) Reasonable adaptations and accommodations for students with diverse learning needs necessary to measure the achievement of those students relative to the State's standards; and

(iii)(A) Inclusion of limited-English proficient students who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English.

(B) To meet this requirement, the State—

(*1*) Shall make every effort to use or develop linguistically accessible assessment measures; and

(*2*) May request assistance from the Secretary if those measures are needed.

(8) Include, for determining the progress of the LEA only, students who have attended schools in the LEA for a full academic year, but who have not attended a single school in the LEA for a full academic year.

(9) Provide individual student interpretive and descriptive reports that include—

(i) Individual scores; or

(ii) Other information on the attainment of student performance standards.

(10) Enable results to be disaggregated within each State, LEA, and school by—

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) English proficiency status;

(iv) Migrant status;

(v) Students with disabilities as compared to students without disabilities; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(c)(1) If a State has developed or adopted assessments for all students in mathematics and reading/language arts under Title III of the Goals 2000: Educate America Act or under another process, the State shall use those assessments, modified, if necessary, to conform with the requirements in paragraph (b) of this section and § 200.3, to carry out this subpart.

(2) Paragraph (c)(1) of this section does not relieve the State from including students served under this subpart in assessments in any other subjects the State has developed or adopted for all children.

(d)(1) Except as provided in paragraph (d)(2) and (3) of this section, if a State has not developed or adopted assessments in at least mathematics and reading/language arts that meet the requirements in paragraph (b) of this section, the State shall—

(i) By the beginning of the 2000–2001 school year, develop those assessments and field-test them for one year; and

(ii) Develop a timetable and benchmarks, including reports of validity studies, for completing the development and field testing of those assessments.

(2) The State may request a one-year extension from the Secretary to test its new assessments if the State submits a strategy to correct problems identified in the field testing of its assessments.

(3) If a State has not developed assessments in at least mathematics and reading/language arts that meet the requirements in paragraph (b) of this section by the beginning of the 2000–2001 school year and is denied an extension, the State shall adopt a set of assessments in those subjects such as assessments contained in the plans of other States the Secretary has approved.

(e)(1) While a State is developing assessments under paragraph (d) of this section, the State may propose to use a transitional set of yearly statewide assessments that will—

(i) Assess the performance of complex skills and challenging subject matter in at least mathematics and reading/language arts; and

(ii) Be administered at some time during—

(A) Grades 3 through 5;

(B) Grades 6 through 9; and

(C) Grades 10 through 12.

(2) Transitional assessments do not need to meet the other requirements of this section.

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

§ 200.5 Requirements for school improvement.

(a) *Local review.* (1)(i) Each LEA receiving funds under this subpart shall review annually the progress of each school served under this subpart to determine whether the school is meeting or making adequate progress toward enabling its students to meet the State's student performance standards described in the State plan.

(ii) An LEA may review a targeted assistance school on the progress of only those students that have been or are served under this subpart.

(2) In conducting its review, an LEA shall—

(i)(A) Use the State assessments or transitional assessments described in the State plan; and

(B) Use any additional measures or indicators described in the LEA's plan; or

(ii) If the State assessments are not conducted in a Title I school, use other appropriate measures or indicators to review the school's progress; and

(iii)(A) Disaggregate the results of the review according to the categories specified in § 200.4(b)(10);

(B) Seek to produce, in schoolwide program schools, statistically sound results for each category through the use of oversampling or other means; and

(C) Report disaggregated data to the public only when those data are statistically sound.

(3) The LEA shall—

(i) Publicize and disseminate to teachers and other staff, parents, students, the community, and administrators, including principals, the results of the annual review of all schools served under this subpart in individual school performance profiles; and

(ii) Provide the results of the annual review to schools served under this subpart so that the schools can continually refine their program of instruction to help all children participating under this subpart meet the State's student performance standards.

(Authority: 20 U.S.C. 6317(a))

§ 200.6 Requirements for LEA improvement.

(a) *State review.* (1)(i) Each SEA shall review annually the progress of each LEA served under this subpart to determine whether the schools receiving assistance under this subpart are making adequate progress toward enabling their students to meet the State's student performance standards described in the State plan.

(ii) An SEA may review the progress of the schools served by an LEA only for

those students that have been or are being served under this subpart.

(2) In conducting its review, an SEA shall—

(i) Disaggregate the results of the review according to the categories specified in § 200.4(b)(10);

(ii) Consider other indicators, if applicable, in accordance with section 1112(b)(1) of the Act; and

(iii) Report disaggregated data to the public only when those data are statistically sound.

(3) The SEA shall publicize and disseminate to LEAs, teachers, and other staff, parents, students, the community, and administrators, including principals, the results of the State review.

(Authority: 20 U.S.C. 6317(d))

§ 200.7 [Reserved]

Schoolwide Programs

§ 200.8 Schoolwide program requirements.

(a) *General.* (1) An eligible school, in consultation with its LEA, may use funds or services under this subpart, in combination with other Federal, State, and local funds it receives, to upgrade the entire educational program in the school to support systemic reform in accordance with the provisions of this section.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a school may not start a new schoolwide program until the SEA provides written information to each LEA that the SEA has established a statewide system of support and improvement.

(ii) If a school desires to start a schoolwide program prior to the establishment of a statewide system of support and improvement, the school shall demonstrate to the LEA that the school has received high-quality technical assistance and support from other providers of assistance.

(b) *Eligibility for a schoolwide program.* A school may operate a schoolwide program if—

(1) The LEA determines that the school serves a participating attendance area or is a participating school under section 1113 of the Act; and

(2)(i) For the initial year of the schoolwide program, the school meets either of the following criteria:

(A) For the 1995–1996 school year—

(*1*) The school serves a school attendance area in which not less than 60 percent of the children are from low-income families; or

(*2*) Not less than 60 percent of the children enrolled in the school are from low-income families.

(B) For the 1996–1997 school year and subsequent years, the percentages of children from low-income families in paragraph (b)(2)(i)(A) may not be less than 50 percent.

(ii) The LEA may choose to determine the percentage of children from low-income families under paragraph (b)(2)(i) based on a measure of poverty that is different from the poverty measure or measures used by the LEA to identify and rank school attendance areas for eligibility and participation under this subpart.

(c) *Availability of other Federal funds.* (1) In addition to funds under this subpart, a school may use in its schoolwide program Federal funds under any program administered by the Secretary, except programs under the Individuals with Disabilities Education Act (IDEA), that is included on the most recent notice published by the Secretary in the **Federal Register**.

(2) For the purposes of this section, the authority to combine funds from other Federal programs also applies to services provided to a school with those funds.

(3)(i) Except as provided in paragraph (c)(3)(ii) of this section, a school that combines funds from any other Federal program administered by the Secretary in a schoolwide program—

(A) Is not required to meet the statutory or regulatory requirements of that program applicable at the school level; but

(B) Shall meet the intent and purposes of that program to ensure that the needs of the intended beneficiaries of that program are addressed.

(ii)(A) An LEA or a school that chooses to use funds from other programs shall not be relieved of statutory and regulatory requirements applicable to those programs relating to—

(*1*) Health and safety;

(*2*) Civil rights;

(*3*) Gender equity;

(*4*) Participation and involvement of parents and students;

(*5*) Private school children, teachers, and other educational personnel;

(*6*) Maintenance of effort;

(*7*) Comparability of services;

(*8*) Use of Federal funds to supplement, not supplant non-Federal funds in accordance with paragraph (f)(1)(iii) and (2) of this section; and

(*9*) Distribution of funds to SEAs and LEAs.

(B) A school operating a schoolwide program shall comply with the following requirements if it combines funds from these programs in its schoolwide program:

(*1*) *Migrant education.* A school that combines in its schoolwide program funds received under Part C of Title I of the Act shall—

(*A*) In consultation with parents of migratory children or organizations representing those parents, first address the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit migratory children to participate effectively in school; and

(*B*) Document that services to address those needs have been provided.

(*2*) *Indian education.* A school may combine funds received under subpart 1 of Part A of Title IX of the Act in its schoolwide program if the parent committee established by the LEA under section 9114(c)(4) of the Act approves the inclusion of those funds.

(iii) This paragraph does not relieve—

(A) An LEA from complying with all requirements that do not affect the operation of a schoolwide program; or

(B) A non-schoolwide program school from complying with all applicable requirements.

(d) *Components of a schoolwide program.* A schoolwide program must include the following components:

(1) A comprehensive needs assessment involving the parties listed in paragraph (e)(2)(ii) of this section of the entire school that is based on—

(i) Information on the performance of children in relation to the State content standards and the State student performance standards under section 1111(b)(1) of the Act; or

(ii) Until the State develops or adopts standards under section 1111(b)(1) of the Act, an analysis of available data on the achievement of students in the school.

(2) Schoolwide reform strategies that—

(i) Provide opportunities, based on best knowledge and practice, for all children in the school to meet the State's proficient and advanced levels of student performance;

(ii) Are based on effective means of improving the achievement of children, such as utilizing research-based teaching strategies;

(iii) Use effective instructional strategies that—

(A) Increase the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs;

(B) Provide an enriched and accelerated curriculum; and

(C) Meet the educational needs of historically underserved populations;

(iv)(A) Address the needs of all children in the school, particularly the needs of children who are members of the target population of any program that is included in the schoolwide program under paragraph (c) of this section; and

(B) Address how the school will determine if those needs have been met; and

(v) Are consistent with, and designed to implement, the State and local improvement plans, if any, approved under Title III of the Goals 2000: Educate America Act.

(3) Instruction by highly qualified professional staff.

(4)(i) Professional development, in accordance with section 1119 of the Act, for teachers and aides and, where appropriate, principals, pupil services personnel, other school staff, and parents to enable all children in the school to meet the State's student performance standards.

(ii) The school shall devote sufficient resources to effectively carry out its responsibilities for professional development, either alone or in consortia with other schools.

(5) Strategies to increase parental involvement, such as family literacy services.

(6) Strategies in an elementary school for assisting preschool children in the transition from early childhood programs, such as Head Start, Even Start, or a State-run preschool program, to the schoolwide program.

(7) Strategies to involve teachers in the decisions regarding the use of additional local, high-quality student assessments, if any, under section 1112(b)(1) of the Act to provide information on, and to improve, the performance of individual students and the overall instructional program.

(8)(i) Activities to ensure that students who experience difficulty mastering any of the standards required by section 1111(b) of the Act during the school year will be provided effective, timely additional assistance, which must include

(A) Strategies to ensure that students' difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance;

(B) To the extent the school determines feasible using funds under this subpart, periodic training for teachers in how to identify those difficulties and to provide assistance to individual students; and

(C) For any student who has not met those standards, parent-teacher conferences to discuss—

(*1*) What the school will do to help the student meet the standards;

(*2*) What the parents can do to help the student improve the student's performance; and

(*3*) Additional assistance that may be available to the student at the school or elsewhere in the community.

(ii) This provision does not—

(A) Require the school or LEA to develop an individualized education program (IEP) for each student identified under paragraph (d)(8) of this section; or

(B) Relieve the school or LEA from the requirement under the IDEA to develop IEPs for students with disabilities.

(e) *Schoolwide program plan.* (1) An eligible school that desires to operate a schoolwide program shall develop, in consultation with the LEA and its school support team or other technical assistance provider, a comprehensive plan for reforming the total instructional program in the school that—

(i) Incorporates the components under paragraph (d) of this section;

(ii) Describes how the school will use resources under this subpart and from other sources to implement those components;

(iii) Includes a list of State and local programs and other Federal programs under paragraph (c) of this section that will be included in the schoolwide program; and

(iv)(A) If the State has developed or adopted a State assessment system under section 1111(b)(3) of the Act—

(*1*) Describes how the school will provide individual student assessment results, including an interpretation of those results, to the parents of each child who participates in that assessment; and

(*2*) Provides for the disaggregation of data on the assessment results of students and the reporting of those data in accordance with § 200.5(a); or

(B) If the State has not developed or adopted a State assessment system under section 1111(b)(3) of the Act, describes the data on the achievement of students in the school and effective instructional and school improvement practices on which the plan is based.

(2) The schoolwide program plan must be—

(i) Developed during a one-year period unless—

(A) The LEA, after considering the recommendation of its technical assistance providers, determines that less time is needed to develop and implement the schoolwide program; or

(B) The school is operating a schoolwide program under section 1015 of Chapter 1 of Title I of the Act during the 1994–1995 school year, in which case the school may continue its schoolwide program but shall amend its current plan or develop a new plan in accordance with this section during the first year it receives funds under this part;

(ii) Developed with the involvement of the community to be served and individuals who will carry out the plan, including—

(A) Teachers;

(B) Principals;

(C) Other school staff;

(D) Pupil services personnel, if appropriate;

(E) Parents of students in the school; and

(F) If the plan relates to a secondary school, students from the school;

(iii) Available to the LEA, parents, and the public;

(iv) Translated, to the extent feasible, into any language that a significant percentage of the parents of participating children in the school speak as their primary language; and

(v) If appropriate, developed in coordination with other programs, including those under the School-to-Work Opportunities Act of 1994, the Carl D. Perkins Vocational and Applied Technology Education Act, and the National and Community Service Act of 1990.

(3) The schoolwide program plan remains in effect for the duration of the school's participation under this section.

(4) A school operating a schoolwide program shall review and revise its plan, as necessary, to reflect changes in its schoolwide program or changes to reflect State standards established after the plan was developed.

(f) *Effect of operating a schoolwide program.* (1) No school operating a schoolwide program shall be required to—

(i) Identify particular children under this subpart and under any other Federal program included under paragraph (c) of this section as eligible to participate in the schoolwide program;

(ii) Document that funds available under this subpart and any other Federal program included under paragraph (c) of this section are used to benefit only the intended beneficiaries of the respective programs; or

(iii) Demonstrate that the particular services paid for with funds under this subpart and under any other Federal program included under paragraph (c) of this section supplement the services regularly provided in that school.

(2) A school operating a schoolwide program shall use funds available under this subpart and under any other Federal program included under paragraph (c) of this section only to supplement the total amount of funds that would, in the absence of those funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for

children with disabilities and children with limited-English proficiency.

(Authority: 20 U.S.C. 6314, 6396(b))

§ 200.9 [Reserved]

Participation of Eligible Children in Private Schools

§ 200.10 Responsibilities for providing services to children in private schools.

(a) An LEA shall, after timely and meaningful consultation with appropriate private school officials, provide special educational services or other benefits under this subpart, on an equitable basis, to eligible children who are enrolled in private elementary and secondary schools in accordance with the requirements in §§ 200.11 through 200.17 and section 1120 of the Act.

(b) Eligible private school children are children who—

(1) Reside in a participating school attendance area of the LEA; and

(2) Meet the criteria in section 1115(b) of the Act.

(3) Among the eligible private school children, the LEA shall select children to participate in a manner that is consistent with the provisions in § 200.11.

(Authority: 20 U.S.C. 6315(b); 6321(a))

§ 200.11 Factors for determining equitable participation of children in private schools.

(a) *Equal expenditures.* (1) Expenditures of funds made available under this subpart for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low-income families under § 200.28.

(2) An LEA shall meet this requirement as follows:

(i) Before determining equal expenditures under paragraph (a)(1) of this section, the LEA shall reserve, from the LEA's whole allocation, funds needed to carry out § 200.27.

(ii) The LEA shall reserve the amounts of funds generated by private school children under § 200.28 and, in consultation with appropriate private school officials, may—

(A) Combine those amounts to create a pool of funds from which the LEA provides equitable services to eligible private school children, in the aggregate, in greatest need of those services; or

(B) Provide equitable services to eligible children in each private school with the funds generated by children from low-income families under § 200.28 who attend that private school.

(b) *Services on an equitable basis.* (1) The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits provided to public school children participating under this subpart.

(2) Services are equitable if the LEA—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;

(ii) Meets the equal expenditure requirements under paragraph (a) of this section; and

(iii) Provides private school children with an opportunity to participate that—

(A) Is equitable to the opportunity provided to public school children; and

(B) Provides reasonable promise of those children achieving the high levels called for by the State's student performance standards.

(3) The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

(Authority: 20 U.S.C. 6321(a))

§ 200.12 Requirements to ensure that funds do not benefit a private school.

(a) An LEA shall use funds under this subpart to provide services that supplement, and in no case supplant, the level of services that would, in the absence of Title I services, be available to participating children in private schools.

(b) An LEA shall use funds under this subpart to meet the special educational needs of participating private school children, but not for—

(1) The needs of the private school; or

(2) The general needs of children in the private school.

(Authority: 20 U.S.C. 6321(a), 6322(b))

§ 200.13 Requirements concerning property, equipment, and supplies for the benefit of private school children.

(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under this subpart for the benefit of eligible private school children.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment and supplies placed in a private school—

(1) Are used only for Title I purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Title I purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Title I purposes.

(e) No funds under this subpart may be used for repairs, minor remodeling, or construction of private school facilities.

(f) For the purpose of this section, the term *public agency* includes the LEA.

(Authority: 20 U.S.C. 6321(c))

§ 200.14 [Reserved]

Capital Expenses

§ 200.15 Payments to SEAs for capital expenses.

(a) From the amount appropriated for capital expenses under section 1002(e) of the Act, the Secretary pays a State an amount that bears the same ratio to the amount appropriated as the number of private school children in the State who received services under this subpart in the most recent year for which data satisfactory to the Secretary are available bears to the total number of private school children served in that same year in all the States.

(b) The Secretary reallocates funds not used by a State for purposes of § 200.16 among other States on the basis of their respective needs.

(Authority: 20 U.S.C. 6321(e)(1))

§ 200.16 Payments to LEAs for capital expenses.

(a)(1)(i) An LEA may apply to the SEA for a payment to cover capital expenses that the LEA, in providing equitable services to eligible private school children—

(A) Is currently incurring; or

(B) Would incur because of an expected increase in the number of private school children to be served.

(ii) An LEA may apply for a payment to cover capital expenses it incurred in prior years for which it has not been reimbursed if the LEA demonstrates that its current needs for capital expenses have been met.

(2) *Capital expenses* means only expenditures for noninstructional goods and services that are incurred as a result of implementation of alternative delivery systems to comply with the requirements of *Aguilar v. Felton.* These expenditures—

(i) Include—

(A) The purchase, lease, and renovation of real and personal property (including mobile educational units, and leasing of neutral sites or space);

(B) Insurance and maintenance costs;

(C) Transportation; and

(D) Other comparable goods and services; and

(ii) Do not include the purchase of instructional equipment such as computers.

(b) An SEA shall distribute funds it receives under § 200.15 to LEAs that apply on the basis of need.

(Authority: 20 U.S.C. 6321(e))

§ 200.17 Use of LEA payments for capital expenses.

(a) Unless an LEA is authorized by the SEA to reimburse itself for capital expenses incurred in prior years, the LEA shall use payments received under § 200.16 to cover capital expenses the LEA is incurring or will incur to maintain or increase the number of private school children being served.

(b) The LEA may not take the payments received under § 200.16 into account in meeting the requirements in § 200.11(a).

(c) The LEA shall account separately for payments received under § 200.16.

(Authority: 20 U.S.C. 6321(e)(3))

§ 200.18–200.19 [Reserved]

Procedures for the Within-State Allocation of LEA Program Funds

§ 200.20 Allocation of funds to LEAs.

(a) *Subcounty allocations.* (1) Except as provided in paragraph (b) of this section, § 200.23(c) (1) and (3)(ii), and § 200.25, an SEA shall allocate the county amounts determined by the Secretary for basic grants, concentration grants, and targeted grants to each eligible LEA within the county on the basis of the number of children counted in § 200.21.

(2) If an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to the LEA from the county aggregate amount for each county in which the LEA is located, provided the LEA is eligible for a grant.

(b) *Statewide allocations.* (1) In any State in which a large number of LEAs overlap county boundaries, an SEA may apply to the Secretary for authority to make allocations under basic grants or targeted grants directly to LEAs without regard to counties.

(2) In its application, the SEA shall—

(i) Identify the data in § 200.21(b) the SEA will use for LEA allocations; and

(ii) Provide assurances that—

(A) Allocations will be based on the data approved by the Secretary under this paragraph; and

(B) A procedure has been established through which an LEA dissatisfied with the determination by the SEA may appeal directly to the Secretary for a final determination.

(c) *LEAs containing two or more counties in their entirety.* If an LEA contains two or more counties in their entirety, the SEA shall allocate funds under paragraphs (a) and (b) of this section to each county as if such county were a separate LEA.

(Authority: 20 U.S.C. 6333–6335)

§ 200.21 Determination of the number of children eligible to be counted.

(a) *General.* An SEA shall count the number of children aged 5–17, inclusive, from low-income families and the number of children residing in local institutions for neglected children.

(b) *Children from low-income families.* (1) An SEA shall count the number of children from low-income families in the school districts of the LEAs using the best available data. The SEA shall use the same measure of low-income throughout the State.

(2) An SEA may use one of the following options to obtain its count of children from low-income families:

(i) The factors under section 1124(c)(1) of the Act (excluding children in local institutions for neglected or delinquent children), which include—

(A) Census data on children in families below the poverty level;

(B) Data on children in families above poverty receiving payments under the program of Aid to Families with Dependent Children; and

(C) Data on foster children.

(ii) Alternative data that an SEA determines best reflect the distribution of children from low-income families and that are adjusted to be equivalent in proportion to the total number of children counted under section 1124(c) of the Act (excluding children in local institutions for neglected or delinquent children).

(iii) Data that more accurately reflect the distribution of poverty.

(c) *Children in local institutions for neglected children.*

The SEA shall count the number of children ages 5 to 17, inclusive, in the LEA who resided in a local institution for neglected children—and were not counted under subpart 1 of Part D of Title I (programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one day of which was in the month of October of the preceding fiscal year.

(Authority: 20 U.S.C. 6333(c))

§ 200.22 Allocation of basic grants.

(a) *Eligibility.* An LEA is eligible for a basic grant if—

(1) In school year 1995–96, there are at least 10 children counted under § 200.21 in the LEA; and

(2) Beginning in school year 1996–97—

(i) There are at least 10 children counted under § 200.21 in the LEA; and

(ii) The number of those children is greater than two percent of the LEA's total population aged 5 to 17 years, inclusive.

(b) *Amount of the LEA grant.* An SEA shall allocate basic grant funds to eligible LEAs as provided in § 200.20, except that the SEA shall apply the hold-harmless provisions described in § 200.25.

(Authority: 20 U.S.C. 6333)

§ 200.23 Allocation of concentration grants.

(a) *Eligibility.* An LEA is eligible for a concentration grant if—

(1) The LEA is eligible for a basic grant under paragraph § 200.22(a); and

(2) The number of children counted under § 200.21 in the LEA exceeds—

(i) 6,500; or

(ii) 15 percent of the LEA's total population ages 5 to 17, inclusive.

(b) *Amount of the grant.* (1) Except as provided in paragraph (c) of this section, an SEA shall allocate a county's concentration grant funds only to LEAs that—

(i) Lie, in whole or in part, within the county; and

(ii) Meet the eligibility criteria in paragraph (a) of this section.

(2) An SEA shall allocate concentration grant funds to eligible LEAs as provided in § 200.20(a), except that the SEA shall apply the hold-harmless provision described in § 200.25(a).

(c) *Exceptions.* (1) *Eligible LEAs in ineligible counties.*

(i) An SEA may reserve not more than two percent of the amount of concentration grant funds it receives to make direct allocations to eligible LEAs that are located in counties that do not receive a concentration grant allocation.

(ii) If an SEA plans to reserve concentration grant funds under paragraph (c)(1)(i) of this section, the SEA, before allocating any concentration grant funds under paragraph (b) of this section, shall—

(A) Determine which LEAs located in ineligible counties are eligible to receive concentration grant funds;

(B) Determine the appropriate amount to be reserved;

(C) Proportionately reduce the amount available for concentration grants for eligible counties or LEAs to provide the reserved amount, except that for school year 1996–97 an SEA may not reduce an LEA's allocation below the hold-harmless amount determined under § 200.25(a);

(D) Rank order the LEAs eligible for concentration grant funds that are located in ineligible counties according to the number or percentage of children counted under § 200.21;

(E) Select in rank order, those LEAs that the SEA plans to provide concentration grant funds; and

(F) Distribute the reserved funds among the selected LEAs based on the number of children counted under § 200.21.

(2) *Eligible counties with no eligible LEAs.* In a county in which no LEA meets the eligibility criteria in paragraph (a) of this section, an SEA shall—

(i) Identify those LEAs in which either the number or percentage of children counted under § 200.21 exceeds the average number or percentage of those children in the county; and

(ii) Allocate concentration grant funds for the county among the LEAs identified in paragraph (c)(2)(i) of this section based on the number of children counted under § 200.21 in each LEA compared to the number of those children in all those LEAs.

(3) *States receiving minimum allocations.* In a State that receives a minimum concentration grant under section 1124A(d) of the Act, the SEA shall—

(i) Allocate concentration grant funds among LEAs in the State under paragraphs (a), (b), and (c) (1) and (2) of this section; or

(ii) Without regard to the counties in which the LEAs are located—

(A) Identify those LEAs in which either the number or percentage of children counted under § 200.21 exceeds the average number or percentage of those children in the State; and

(B) Allocate concentration grant funds among the LEAs identified in paragraph (c)(3)(ii)(A) of this section based on the number of children counted under § 200.21 in each LEA.

(Authority: 20 U.S.C. 6334)

§ 200.24 Allocation of targeted grants.

(a) *Eligibility.* An LEA is eligible for a targeted grant if—

(1) There are at least 10 children counted under § 200.21 in the LEA; and

(2) The number of those children is at least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(b) *Weighted child count.* In determining an LEA's grant, the SEA shall compute a weighted child count in accordance with section 1125(c) of the Act by taking the larger of—

(1) *Percent-weighted child count.* The number of children counted under § 200.21 multiplied by the weights shown in the following table, with the weights applied in a step-wise manner so that only those children above each weighting threshold receive the higher weight:

LEA percentage of children counted under § 200.21 as a percent of total children ages 5 through 17	Weights
0 to 14.265%	1.00
More than 14.265% up to 21.553%	1.75
More than 21.553% up to 29.223%	2.50
More than 29.223% up to 36.538%	3.25
More than 36.538%	4.00

or;

(2) *Number-weighted child count.* The number of children counted under § 200.21 multiplied by the weights shown in the following table, with the weights applied in a step-wise manner so that only those children above each weighting threshold receive the higher weight:

LEA number of children counted under § 200.21	Weights
1 to 575	1.0
576 to 1,870	1.5
1,871 to 6,910	2.0
6,911 to 42,000	2.5
42,001 or more	3.0

(c) *Amount of LEA grant.* An SEA shall allocate targeted grant funds to eligible LEAs as provided in § 200.20 based on the weighted child count determined in paragraph (b) of this section, except that the SEA shall apply the hold-harmless provisions described in § 200.25.

(Authority: 20 U.S.C. 6335)

§ 200.25 Applicable hold-harmless provisions.

(a) *General.* (1) An SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts established under section 1122(c) of the Act.

(2) The hold-harmless protection limits the maximum reduction in an LEA's allocation when compared to the LEA's allocation for the preceding year.

(3) The hold-harmless shall be applied separately for basic grants, concentration grants, and targeted grants, but shall be applied for each grant formula only in those years authorized under section 1122(c) of the Act, as shown in the table contained in paragraph (a)(4) of this section.

(4) Under section 1122(c) of the Act, the hold-harmless percentage varies based on the year and, for school years 1997–98 and beyond, based on the LEA's number of children counted under § 200.21 as a percentage of the total number of children ages 5–17, inclusive, in the LEA, as shown in the following table:

School year	LEA's § 200.21 children as a percentage of children ages 5–17, inclusive	Hold-harmless percentage	Applicable grant formulas
1995–96	Not applicable	85	Basic Grants.
1996–97	Not applicable	100	Basic Grants and Concentration Grants.
1997–98 and beyond	30 or more	95	Basic Grants and Targeted Grants.
	15% or more and less than 30%	90	
	Less than 15%	85	

(5) For school year 1995–96, the SEA shall compute each LEA's hold-harmless amount without regard to the amount the LEA received for delinquent children counted under section 1005 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 as in effect on September 30, 1994.

(b) *Adjustment for insufficient funds.* (1) *School year 1995–96.* If the Secretary's allocation for a county is not sufficient to give an LEA 85 percent of the amount it received for school year 1994–95, without regard to the amount the LEA received for delinquent children, the SEA may use funds received under Part D, subpart 2 (local agency programs) of the Act to bring such LEA up to its hold-harmless amount.

(2) *School years 1997–98 and beyond.* If the Secretary's allocation for a county is not sufficient to meet the LEA hold-harmless requirements of paragraph (a)

of this section, the SEA shall reallocate funds proportionately from all other LEAs in the State that are receiving funds in excess of the hold-harmless amounts specified in paragraph (a) of this section.

(c) *Eligibility for hold-harmless protection.* An LEA must be eligible for basic grant, concentration grant, and targeted grant funds in order for the respective provisions in paragraphs (a) and (b) of this section to apply.

(Authority: 20 U.S.C. 6332(c))

§ 200.26 [Reserved]

Procedures for the Within-District Allocation of LEA Program Funds

§ 200.27 Reservation of funds by an LEA.

Before allocating funds in accordance with § 200.28, an LEA shall reserve funds as are reasonable and necessary to—

(a) Provide services comparable to those provided to children in participating school attendance areas and schools to serve—

(1) Children in local institutions for neglected children; and

(2) Where appropriate—

(i) Eligible homeless children who do not attend participating schools, including providing educationally related support services to children in shelters;

(ii) Children in local institutions for delinquent children; and

(iii) Neglected and delinquent children in community-day school programs;

(b) Meet the requirements for parental involvement in section 1118(a)(3) of the Act;

(c) Administer programs for public and private school children under this part, including special capital expenses defined in § 200.16; and

(d) Conduct other authorized activities such as professional development, school improvement, and coordinated services.

(Authority: 20 U.S.C. 6313(c)(3), 6317(c), 6319(a)(3), 6320)

§ 200.28 Allocation of funds to school attendance areas and schools.

(a) (1) An LEA shall allocate funds under this subpart to school attendance areas or schools, identified as eligible and selected to participate under section 1113 (a) or (b) of the Act, in rank order on the basis of the total number of children from low-income families in each area or school.

(2) In calculating the total number of children from low-income families, the LEA shall include children from low-income families who attend private schools, using—

(i) The same poverty data, if available, as the LEA uses to count public school children; or

(ii) If the same data are not available, comparable data collected through alternative means such as a survey.

(b) (1) Except as provided in paragraphs (b)(2) and (d) of this section, an LEA shall allocate to each participating school attendance area or school an amount for each low-income child that is at least 125 percent of the per-pupil amount of funds the LEA received for that year under subpart 2 of Part A of Title I. The LEA shall use the poverty measure selected by the LEA under section 1113(a)(5) of the Act to compute the per-pupil amount.

(2) If an LEA is serving only school attendance areas or schools in which the percentage of children from low-income families is 35 percent or more, the LEA is not required to allocate a per-pupil amount of at least 125 percent.

(c) An LEA is not required to allocate the same per-pupil amount to each participating school attendance area or school provided the LEA allocates higher per-pupil amounts to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

(d) An LEA may reduce the amount of funds allocated under this section to a school attendance area or school if the area or school is spending supplemental State or local funds for programs that meet the requirements in § 200.62(c).

(e) If an LEA contains two or more counties in their entirety, the LEA shall distribute to schools within each county a share of the LEA's total grant that is no less than the county's share of the child count used to calculate the LEA's grant.

(Authority: 20 U.S.C. 6313(c), 6333(c)(2))

§ 200.29 [Reserved]

Subpart B—Even Start Family Literacy Program

§ 200.30 Migrant Education Even Start Program Definition.

Eligible participants under the Migrant Education Even Start Program (MEES) are those who meet the definitions of a migratory child, a migratory agricultural worker or a migratory fisher in § 200.40.

(Authority: 20 U.S.C. 6362, 6511)

§§ 200.31–200.39 [Reserved]

Subpart C—Migrant Education Program

§ 200.40 Program definitions.

The following definitions apply to programs and projects operated under this subpart:

(a) *Agricultural activity* means—

(1) Any activity directly related to the production or processing of crops, dairy products, poultry or livestock for initial commercial sale or personal subsistence;

(2) Any activity directly related to the cultivation or harvesting of trees; or

(3) Any activity directly related to fish farms.

(b) *Fishing activity* means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or personal subsistence.

(c) *Migratory agricultural worker* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in agricultural activities (including dairy work) as a principal means of livelihood.

(d) *Migratory child* means a child who is, or whose parent, spouse, or guardian is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent, spouse, guardian in order to obtain, temporary or seasonal employment in agricultural or fishing work—

(1) Has moved from one school district to another;

(2) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(3) Resides in a school district of more than 15,000 square miles, and has moved a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

(e) *Migratory fisher* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in fishing activities as a principal means of livelihood. This definition also includes a person who resides in a school district of more than 15,000 square miles, and moves a distance of 20 miles or more to a

temporary residence to engage in a fishing activity.

(f) *Principal means of livelihood* means that the agricultural or fishing activity constitutes an essential part of providing a living for the worker and his or her family.

(Authority: 20 U.S.C. 6391–6399, 6511)

§ 200.41 Use of program funds for unique program function costs.

An SEA may use the funds available from its State Migrant Education Program to carry out other administrative activities, beyond those allowable under § 200.61, that are unique to the MEP or that are the same or similar to those performed by LEAs in the State under subpart A. These activities include but are not limited to—

(a) Statewide identification and recruitment of eligible migratory children;

(b) Interstate and intrastate coordination of the State MEP and its local projects with other relevant programs and local projects in the State and in other States;

(c) Procedures for providing for educational continuity for migratory children through the timely transfer of educational and health records, beyond that required generally by State and local agencies.

(d) Collecting and using information for accurate distribution of subgrant funds; and

(e) Development and implementation of a statewide plan for needs assessment and service delivery.

(Authority: 20 U.S.C. 6392, 6511)

§ 200.42 Responsibilities of SEAs and operating agencies for assessing the effectiveness of the MEP.

(a) Each SEA and operating agency receiving funds under the MEP has the responsibility to determine the effectiveness of its program and projects in providing migratory students with the opportunity to meet the same challenging State content and performance standards, required under § 200.2, that the State has established for all children.

(b) To determine the effectiveness of its program and projects, each SEA and operating agency receiving MEP funds shall, wherever feasible, use the same high-quality yearly student assessments or transitional assessments that the State establishes for use in meeting the requirements of § 200.4.

(c) In a project where it is not feasible to use the same student assessments that are being used to meet the requirements of § 200.4 (e.g., in a summer-only project, or in a project where no migratory students are enrolled at the time the State-established assessment takes place), the SEA must ensure that the relevant operating agency carries out some other reasonable process or processes for examining the effectiveness of the project.

(Authority: 20 U.S.C. 6394)

§ 200.43 Responsibilities of SEAs and operating agencies for improving services to migratory children.

While the specific school improvement requirements of section 1116 of the statute do not apply to the MEP, SEAs and local operating agencies receiving MEP funds shall use the results of the assessments carried out under § 200.42 to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

§ 200.44 Use of MEP funds in schoolwide projects.

Funds available under Part C of Title I of the Act may be used in a schoolwide program subject to the requirements of § 200.8(c)(3)(ii)(B)(*1*).

(Authority: 20 U.S.C. 6396)

§ 200.45 Responsibilities for participation of children in private schools.

An SEA and its operating agencies shall conduct programs and projects under this subpart in a manner consistent with the basic requirements of section 1120 of the Act.

(Authority: 20 U.S.C. 6394)

§§ 200.46–200.49 [Reserved]

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out

§ 200.50 Program definitions.

(a) The following definitions apply to the programs authorized in Part D, subparts 1 and 2 of Title I of the Act:

Children and youth means the same as ''children'' as that term is defined in § 200.65(a).

(b) The following definitions apply to the programs authorized in Part D, subpart 1 of Title I of the Act:

Institution for delinquent children and youth means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who—

(1) Have been adjudicated to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

Institution for neglected children and youth means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

Regular program of instruction means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(c) The following definitions apply to the local agency program authorized in Part D, subpart 2 of Title I of the Act:

Immigrant children and youth and *Limited English Proficiency* have the same meanings as those terms are defined in section 7501 of the Act, except that the terms ''individual'' and ''children and youth'' used in those definition mean ''children and youth'' as defined in this section.

Locally operated correctional facility means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons under 21 years of age. The term also includes a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth.

Migrant youth means the same as ''migratory child'' as that term is defined in § 200.40(d).

(Authority: 20 U.S.C. 6432, 6472)

§ 200.51 SEA counts of eligible children.

To receive an allocation under Part D, subpart 1 of Title I of the Act, an SEA must provide the Secretary with a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in paragraphs (a) and (b) of this section:

(a) *Enrollment.* (1) To be counted, a child or youth must be enrolled in a regular program of instruction for at least—

(i) 20 hours per week if in an institution or community day program for neglected or delinquent children; or

(ii) 15 hours per week if in an adult correctional institution.

(2) The State agency shall specify the date on which the enrollment of neglected or delinquent children is determined under paragraph (a)(1) of this section, except that the date specified shall be—

(i) Consistent for all institutions or community day programs operated by the State agency; and

(ii) Represent a school day in the calendar year preceding the year in which funds become available.

(b) *Adjustment of enrollment.* The SEA shall adjust the enrollment for each institution or community day program served by a State agency by—

(1) Multiplying the number determined in paragraph (a) of this section by the number of days per year the regular program of instruction operates; and

(2) Dividing the result of paragraph (b)(1) of this section by 180.

(c) *Date of submission.* The SEA must annually submit the data in paragraph (b) of this section no later than January 31.

(Authority: 20 U.S.C. 6432)

§§ 200.52–200.59 [Reserved]

Subpart E—General Provisions

§ 200.60 Reservation of funds for State administration and school improvement.

(a) *State administration.* An SEA may reserve for State administration activities authorized in section 1603 of the Act no more than—

(1) One percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act; or

(2) (i) $400,000 ($50,000 for the Outlying Areas), whichever is greater.

(ii) An SEA reserving $400,000 under paragraph (a)(2)(i) of this section shall reserve proportionate amounts from each of the amounts allocated to the State or Outlying Area under section 1002 (a), (c), and (d) of the Act.

(b) *School improvement.* (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the Act, an SEA may reserve no more than .5 percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act.

(2) (i) An SEA shall have available from funds received under section 1002(f) of the Act or reserved under paragraph (b)(1) of this section no less than $200,000 ($25,000 for the Outlying Areas) to carry out school improvement activities.

(ii)(A) If funds made available for school improvement under section 1002(f) of the Act do not equal $200,000 ($25,000 for Outlying Areas), the SEA shall reserve funds in accordance with paragraph (b)(1) of this section.

(B) If the amount reserved under paragraph (b)(1) when added to funds received under section 1002(f), does not equal $200,000 ($25,000 for the Outlying Areas), the SEA shall reserve additional funds under section 1002 (a), (c), and (d) as are necessary to make $200,000 ($25,000 for the Outlying Areas) available to the SEA.

(c) *Reservation from section 1002(a) funds.* In reserving funds for State administration and school improvement under section 1002(a) of the Act, an SEA shall—

(1) Reserve proportionate amounts from each of the State's basic grant, concentration grant, and targeted grant allocations; and

(2) Ensure that from the funds remaining for basic grants, concentration grants, and targeted grants after reserving funds for State administration and school improvement, no eligible LEA receives less than the hold-harmless amounts determined under § 200.25, except when the amounts remaining are insufficient to pay all LEAs the hold-harmless amounts provided in § 200.25, the SEA shall ratably reduce each LEA's hold harmless allocation to the amount available.

(Authority: 20 U.S.C. 6303, 6513(c))

§ 200.61 Use of funds reserved for State administration.

An SEA may use any of the funds that it has reserved under § 200.60(a) to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under Title I of the Act.

(Authority: 20 U.S.C. 6513(c))

§ 200.62 [Reserved]

§ 200.63 Supplement, not supplant.

(a) Except as provided in paragraph (c) of this section, a grantee or subgrantee under subparts A, C, or D of this part may use funds available under these subparts only to supplement the amount of funds that would be made available, in the absence of funds made available under subparts A, C, and D from non-Federal sources for the education of pupils participating in programs assisted under subparts A, C, and D and in no case may funds available under these subparts be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, a grantee or subgrantee under subparts A, C, or D is not required to provide services under subparts A, C, or D through the use of a particular instructional method or in a particular instructional setting.

(c) (1) For purposes of determining compliance with paragraph (a) of this section, a grantee or subgrantee under subparts A or C may exclude supplemental State and local funds spent in any eligible school attendance area or eligible school for programs that meet the requirements of section 1114 or section 1115 of the Act.

(2) A supplemental State or local program will be considered to meet the requirements of section 1114 if the program—

(i) Is implemented in a school that meets the schoolwide poverty threshold for eligibility in § 200.8(b);

(ii) Is designed to upgrade the entire educational program in the school to support students in their achievement toward meeting the State's challenging student performance standards;

(iii) Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student performance standards; and

(iv) Uses the State's system of assessment to review the effectiveness of the program.

(3) A supplemental State or local program will be considered to meet the requirements of section 1115 if the program—

(i) Serves only children who are failing, or most at risk of failing, to meet the State's challenging student performance standards;

(ii) Provides supplementary services designed to meet the special educational needs of the children who are participating to support their achievement toward meeting the State's student performance standards that all children are expected to meet; and

(iii) Uses the State's system of assessment to review the effectiveness of the program.

(4) These conditions also apply to supplemental State and local funds expended under sections 1113(b)(1)(C) and 1113(c)(2)(B) of the Act.

(Authority: 20 U.S.C. 6322(b))

§ 200.64 Maintenance of effort.

(a) *General.* An LEA receiving funds under subparts A or C may receive its full allocation of funds under subparts A and C if it finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of combined fiscal effort per student or the aggregate

expenditures for the second preceding fiscal year.

(b) *Meaning of ''preceding fiscal year''.* For purposes of determining maintenance of effort, the ''preceding fiscal year'' is the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1995, if a State is using the Federal fiscal year, the ''preceding fiscal year'' is Federal fiscal year 1994 (which began on October 1, 1993) and the ''second preceding fiscal year'' is Federal fiscal year 1993 (which began on October 1, 1992). If a State is using a fiscal year that begins on July 1, 1995, the ''preceding fiscal year'' is the 12-month period ending on June 30, 1994, and the ''second preceding fiscal year, is the period ending on June 30, 1993.

(c) *Expenditures.* (1) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(2) *Not to be considered.* The SEA shall not consider the following expenditures in determining an LEA's compliance with the maintenance of effort requirement:

(i) Any expenditures for community services, capital outlay, and debt service; and

(ii) Any expenditures made from funds provided by the Federal Government for which the LEA is required to account to the Federal Government directly or through the SEA.

(Authority: 20 U.S.C. 6322(a))

§ 200.65 Definitions.

The following definitions apply to programs and projects operated under this part:

(a) *Children* means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12; and

(2) Preschool children.

(b) *Fiscal year* means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for record-keeping.

(c) *Preschool children* means children who are—

(1) Below the age and grade level at which the agency provides free public education; and

(2) Of an age at which they can benefit from an organized instructional program provided in a school or educational setting.

(Authority: 20 U.S.C. 6315, 6511)

§§ 200.66–200.69 [Reserved]

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