DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA91

Title I—Improving the Academic Achievement of the Disadvantaged

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the programs administered under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)—referred to in these proposed regulations as the Title I programs. These proposed regulations are needed to implement recent changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: We must receive your comments on or before September 5, 2002.

ADDRESSES: Address all comments for subparts A, B, and D of part 200 in these proposed regulations and all comments on information collection requirements to Jacquelyn C. Jackson, Ed.D., Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, FB–6, Washington, DC 20202–6132. The Fax number for submitting comments on subparts A, B, and D is (202) 260–7764.

Address all comments for subpart C of part 200 in these proposed regulations to Francisco Garcia, Director, Migrant Education Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E317, FB–6, Washington, DC 20202–6135. The Fax number for submitting comments on subpart C is (202) 205–0089.

If you prefer to send your comments through the Internet, use the following address: *TitleIRulemaking@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For subparts A, B, D, and E, of part 200, Jackie Jackson, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

For subparts C and E of part 200, James English, Migrant Education Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E315, FB–6, Washington, DC 20202–6135. Telephone (202) 260–1394.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment

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

During and after the comment period, you may inspect all public comments about subparts A, B, D, and E of part 200, as appropriate, of these proposed regulations in room 3C147, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. You may inspect all public comments about subparts C and E of part 200, as appropriate, of these proposed regulations in room 3E315, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

Background

The NCLB Act reauthorized the ESEA and incorporated the major educational reforms proposed by President George W. Bush in his No Child Left Behind initiative. These reforms included important changes to Title I of the ESEA, which is designed to help disadvantaged children meet high academic standards.

These proposed regulations would implement those changes in a manner that respects State and local control over education while ensuring strong accountability for results. On July 5, 2002, the Secretary separately published in the **Federal Register** final regulations for the standards and assessment provisions of Title I, part A of the ESEA.

The Secretary intends to regulate only if absolutely necessary: for example, if the statute requires regulations or if regulations are necessary to provide flexibility or clarification for State educational agencies (SEAs) and local educational agencies (LEAs). Rather than regulating extensively, the Secretary intends to issue nonregulatory guidance addressing particular legal and policy issues under the Title I programs. This guidance will inform schools, parents, school districts, States, and other affected parties about the flexibility that exists under the statute, including different approaches they may take to carry out the statute's requirements.

Significant Proposed Regulations

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

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Section 200.11 Participation in NAEP

Statute: Section 1111(c)(2) of the NCLB Act requires each State to participate in biennial State assessments of 4th and 8th grade reading and mathematics under the National Assessment of Educational Progress (NAEP). Similarly, section 1112(b)(1)(F) of the NCLB Act requires each LEA participating under subpart A of this part to participate, if selected, in the State NAEP.

Proposed Regulations: The proposed regulation would clarify that LEAs receiving Title I funds must participate in NAEP if they are selected.

Reasons: The proposed regulations make clear that a condition of receiving Title I funds is that, if selected, the LEA must participate in NAEP despite section 411(d)(1) of the National Education Statistics Act of 1994, which provides for voluntary participation of LEAs.

State Accountability System

Section 200.12 Single State Accountability System

Statute: Under section 1111(b)(2)(A) of the ESEA, each State must develop and implement a single, statewide accountability system to ensure that all LEAs and public schools in the State make adequate yearly progress. The State's accountability system must be based on the State's academic standards and assessment system and take into account all public elementary and secondary school students; be the same accountability system the State uses for all public schools and LEAs in the State; and include rewards and sanctions the State will use to hold LEAs and public schools accountable for student achievement. The State's accountability system may, but is not required to, apply the requirements in section 1116 of Title I relating to identifying schools for improvement, corrective action, and restructuring to non-Title I schools and non-Title I LEAs.

Proposed Regulations: Proposed § 200.12 would implement the statutory provisions requiring a single, statewide accountability system. It would make clear that these provisions take effect beginning with the 2002–2003 school year. Proposed § 200.12 also would require States to include, in their accountability system, guidelines for identifying the students with disabilities who should take alternate assessments and would require reporting on the number of students with disabilities who take an alternate assessment.

Reasons: Proposed § 200.12 reflects the Secretary's goal of regulating only where necessary to provide clarity or flexibility. It emphasizes the importance of a single, statewide accountability system and sets the context for the subsequent regulations on adequate yearly progress. By requiring States to establish guidelines governing alternate assessments, it also ensures that only students with the most significant disabilities take those assessments.

Adequate Yearly Progress

Sections 200.13 Through 200.20 Adequate Yearly Progress

Statute: Under section 1111(b)(2)(B), each State must demonstrate what constitutes adequate yearly progress of the State, and of all public elementary and secondary schools and LEAs in the State, toward enabling all students to meet the State's student achievement standards. ''Adequate yearly progress'' definitions must apply the same high standards of academic achievement to all public elementary and secondary school students in the State, be statistically valid and reliable, and measure progress based primarily on the State's academic assessments. The definition must include separate annual measurable objectives for continuous and substantial improvement in both mathematics and reading/language arts for all students and for each of the following specific groups of students: students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.

Adequate yearly progress must include a timeline that ensures that all students in each subgroup meet or exceed the State's proficient level of academic achievement no later than the 2013–2014 school year. Using data from the 2001–2002 school year, each State must determine a starting point for reading/language arts and mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement. The starting point must, at a minimum, be based on the higher of two proficiency levels specified in the statute. Adequate yearly progress must include intermediate goals that increase in equal increments over the timeline; the first increment must occur in not more than two years from the baseline year (2001–2002) and the following increases must occur in not more than three years. Adequate yearly progress must also include the graduation rate for high schools and a similar academic indicator for elementary and middle schools.

To make adequate yearly progress, a school must meet two criteria. First, the school must meet or exceed the State's annual measurable objectives with respect to all students and students in each subgroup. If students in any subgroup fail to make the requisite progress, however, the school can still make adequate yearly progress if the percentage of students below proficient in that subgroup decreased by at least 10 percent compared to the preceding year and that subgroup made progress on one or more of the additional academic indicators. Second, at least 95 percent of the students in each subgroup enrolled in the school must take the assessment.

Current Regulations: The current regulations governing adequate yearly progress (34 CFR 200.3) reflect provisions of section 1111 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: The proposed regulations in §§ 200.13 through 200.20 would implement the statutory provisions in section 1111(b)(2) that require each State to demonstrate what constitutes adequate yearly progress. For the most part, the proposed regulations would merely reorganize the statutory provisions to make them more understandable, particularly the interrelationship among the timeline, starting points, intermediate goals, and annual measurable objectives.

In several instances, the proposed regulations would clarify the statutory provisions or provide flexibility. For example, proposed § 200.13(c)(1) permits a State to define achievement standards for students with the most significant cognitive disabilities who take an alternate assessment. Section 1111(b)(2)(I)(ii) of the ESEA provides that children with disabilities who take an alternate assessment must be included in the 95 percent of students who must participate in the assessments in order for a school to make adequate yearly progress. Under the Title 1 accountability system, alternate assessments are an appropriate way to measure the progress of only that very limited portion of students with the most significant cognitive disabilities who will never be able to demonstrate progress on grade level academic achievement standards even if provided the very best possible education. Based on current prevalence rates of students with the most significant cognitive disabilities, proposed § 200.13(c)(2), would set the number of students with disabilities who should be included in accountability measures using alternate standards at not more than 0.5 percent of all students assessed in a State or LEA. For accountability purposes, the performance of all other students with disabilities (including any other students with disabilities who take an alternate assessment) must be assessed against the academic content and achievement standards established under § 200.1.

Proposed § 200.13(d) would make clear that a State must have a way to hold accountable schools in which no grade level is assessed under the State's academic assessment system or whose purpose is to serve students for less than a full academic year. The proposed regulations emphasize, however, that the State does not need to administer a formal assessment to students in these schools. Similarly, proposed § 200.15(b) would clarify that, if a State changes its academic assessment system or its definition of adequate yearly progress, the State may not extend, beyond the 2013–2014 school year, its timeline for enabling all students to reach proficiency. Proposed § 200.16 would make clear that a State must set separate starting points for reading/language arts and mathematics, because the State

must hold schools accountable for student achievement in each subject. That section would permit a State to establish separate starting points by grade span. Proposed § 200.16(b)(2) also would clarify how a State determines a starting point based on the percentage of students at the proficient level in the ''school at the 20th percentile in the State, based on enrollment.''

Section 1111(b)(2)(C)(vi) of the ESEA requires a State to include the graduation rate in its determination of adequate yearly progress for public secondary schools and defines graduation rate as ''the percentage of students who graduate from secondary school with a regular diploma in the standard number of years.'' Proposed § 200.19, which deals with other academic indicators, would rely on language in the conference report to the NCLB Act to permit a State to submit for the Secretary's approval another definition that accurately measures the high school graduation rate. Proposed § 200.19(c) would make clear that a State may, but is not required to, increase the goals of its other academic indicators over the course of its timeline.

Proposed § 200.20, which would implement the statutory provisions for how a school or LEA makes adequate yearly progress, would clarify the statutory requirement that 95 percent of the students enrolled in each subgroup in a school must take the State's academic assessment in order for the school to make adequate yearly progress. Proposed § 200.20(c)(1)(ii) would make clear that the number of students in a subgroup must be of sufficient size to produce statistically reliable results for the 95 percent requirement to affect adequate yearly progress. In other words, if the number of students in a subgroup is too small to produce statistically reliable results, the State need not, on the basis of the 95 percent requirement, identify the school as failing to make adequate yearly progress if less than 95 percent of the students in that subgroup take the State's assessment. This proposed provision would not, however, authorize a State to exclude students in small subgroups from taking the assessment. Finally, proposed § 200.20(e) would permit a State to define ''full academic year'' for the purpose of determining adequate yearly progress.

Reasons: Proposed §§ 200.13 through 200.20 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. These sections also reflect the Secretary's goal to provide added flexibility wherever possible.

In developing these proposed regulations, the Department has carefully based them on the statutory provisions governing adequate yearly progress. These requirements are designed to enhance the quality systems of accountability that many States have already developed. At the core of the NCLB Act's accountability pillar, the statutory provisions require each State to implement a single statewide system for annually holding all public schools and LEAs accountable. This single system will ensure that all students, including students with disabilities, limited English proficient students, economically disadvantaged students, and students from major racial and ethnic groups, will be proficient in reading/language arts and mathematics by the 2013–2014 school year. We are aware that there are rigorous models that States have already developed that may achieve the same fundamental principles of the statute, although through different approaches. For example, some models establish a growth trajectory for each school based on the school's baseline performance. Other models, in determining a school's performance, take into consideration the school's progress in moving students from ''below basic'' to ''basic'' as well as from ''basic'' to ''proficient'' and from ''proficient'' to ''advanced.'' We specifically invite States that have been using different models to comment on the statutory provisions that might affect their use, and how these requirements could be incorporated into their current systems.

Section 200.21 Adequate Yearly Progress of a State

Statute: Section 6161 of the ESEA requires the Secretary, beginning with the 2004–2005 school year, to review whether each State that receives funds under Title I, part A has made adequate yearly progress with respect to each subgroup of students under section 1111(b)(2)(C)(v) of the ESEA. If a State also receives funds under Title III, part A, subpart 1 of the ESEA, the Secretary must also review whether the State has met its annual measurable achievement objectives relating to the development and attainment of English proficiency by limited English proficient students.

Proposed Regulations: Proposed § 200.21 would implement this new requirement. This section would emphasize that the Secretary will review whether a State has made adequate yearly progress as defined in proposed §§ 200.13 through 200.20 for each subgroup of students as well as has met its annual measurable achievement objectives relating to the development and attainment of English proficiency by limited English proficient students.

Reasons: Proposed § 200.21 reflects the Secretary's goal of regulating only where necessary to provide clarity or flexibility. It is included to emphasize, for the first time, a State's responsibility to make adequate yearly progress for each subgroup of students and meet its goals for improving the English proficiency of its limited English proficient students.

Schoolwide Programs

Statute: Section 1114 of the ESEA made three substantive changes to the existing requirements governing schoolwide programs. Section 1114(a)(1) allows a school to operate a schoolwide program if the school serves an eligible school attendance area in which at least 40 percent of the children are from low-income families, or if at least 40 percent of the children enrolled in the school are from such families. Under the previous statute, the eligibility threshold was 50 percent.

Section 1114(b)(1)(A) requires the comprehensive needs assessment for a schoolwide program to take into account the needs of migratory children.

Section 1306(b)(4) of the ESEA made one additional substantive change in the schoolwide program requirements. Under that provision, a school must document that the special educational needs of migrant students have been met before Title I, part C funds may be included in a schoolwide program. Previously, a school was required only to address those needs, not document that they had been met, before including Title I, part C funds.

Current Regulations: Current § 200.8 reflects the basic statutory requirements for schoolwide programs. The regulations specify (1) the eligibility requirements for a schoolwide program—including a provision that permits an LEA to determine schoolwide eligibility using a poverty measure that is different from the poverty measure used to identify and rank school attendance areas; (2) requirements for and restrictions on combining funds in a schoolwide program; (3) components of a schoolwide program; (4) schoolwide program planning and needs assessment; and (5) the effects of operating a schoolwide program in relation to other Federal program requirements.

Proposed Regulations: The proposed regulations would not substantively

change the current regulations beyond conforming them to the new statutory requirements. However, the proposed regulations would reorganize the current regulations in a way that emphasizes the fundamental purpose of a schoolwide program. The provisions of current § 200.8 would be divided into four new, smaller and simpler sections—proposed §§ 200.25 through 200.28.

Proposed § 200.25 would clarify that the purpose of a schoolwide program is to improve the academic achievement of all students, especially those furthest from meeting the State's proficient academic achievement standard. Proposed § 200.25 would also contain the eligibility requirements.

Proposed § 200.26 would clarify that a schoolwide plan must describe how the school will improve academic achievement so that all students will meet the State's proficient academic achievement standard, especially those furthest from meeting proficiency. The proposed section would also clarify that the plan must be reviewed and revised as necessary to reflect changes in the schoolwide program or in the State's academic content standards and academic achievement standards. The proposed section would also include the provisions requiring the comprehensive needs assessment to take into account the needs of migratory children.

Proposed § 200.27 would reorganize the schoolwide components into four primary categories: (1) Schoolwide reform strategies, (2) instruction by highly qualified teachers, (3) parent involvement, and (4) additional support. The proposed section also would emphasize that reform strategies must address the needs of students in the school, but particularly those furthest from meeting the State's proficient academic achievement standard.

Proposed § 200.28 would group together all the statutory provisions addressing the uses of funds in a schoolwide program. These provisions include the new provisions governing meeting the needs of migrant students.

Reasons: The Department has found that school-level officials are sometimes confused about the purpose of the schoolwide approach. Often, schools do not use the flexibility offered by the schoolwide approach as a means to improve achievement, particularly for those students furthest from meeting the proficient standard. These regulations are intended to help schools better understand that schoolwide flexibility is a strategic approach, using scientifically based strategies, for improving student achievement to ensure that no child is left behind.

LEA and School Improvement

Section 200.30 Local Review; and § 200.31 Opportunity To Review School Level Data

Statute: Under section 1116(a) and (b) of Title I, each participating LEA must use the State academic assessments and other indicators in the State plan, and, at the LEA's discretion, other academic indicators described in the LEA's plan, to review the progress of each school served under subpart A of this part to determine whether the school is making adequate yearly progress. The LEA must publicize the results of its review to parents, teachers, principals, schools, and the community.

In general, the LEA's use of other academic indicators may not reduce the number or change the identity of schools that would otherwise be identified for improvement, corrective action, or restructuring, but may result in the identification of additional schools for improvement, corrective action, or restructuring. However, the use of these indicators may permit a school to make adequate yearly progress if the school reduces by at least 10 percent the percentage of a student subgroup failing to meet the proficient level of academic achievement.

Before identifying a school for improvement, corrective action, or restructuring, an LEA must provide the school an opportunity to review the school-level data, including academic assessment data, on which the LEA has based the proposed identification.

Current Regulations: The current regulations governing LEA review of school performance reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.30 would repeat the statutory requirement for LEAs to conduct an annual review of the performance of all schools receiving funds under subpart A of this part. The review would determine whether the schools are making adequate yearly progress toward the goal of helping all students reach proficiency in reading and mathematics within 12 years of enactment of the NCLB Act.

Proposed § 200.30 would further clarify the circumstances under which an LEA could limit its review to the progress of only those students served, or eligible for services, in a school operating a targeted assistance program. The LEA could limit its review only if the students selected for services under the targeted assistance program are those with the greatest need for academic assistance.

Proposed § 200.31 would repeat and reorganize the statutory requirement that an LEA provide a school with the opportunity to review the data on which an LEA has based a proposed identification of the school for improvement, corrective action, or restructuring. The proposed provision would make clear that this review must occur before the LEA's final decision on identification.

Reasons: Proposed §§ 200.30 and 200.31 would reflect the Secretary's goal of clarifying and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.32 Identification for School Improvement; § 200.33 Identification for Corrective Action; § 200.34 Identification for Restructuring; and § 200.35 Delay and Removal

Statute: Under section 1116(b) of Title I, an LEA must (1) identify for school improvement any school that fails to make adequate yearly progress for two consecutive years and (2) must make available public school choice to all students enrolled in the school. If the school fails to make adequate yearly progress for a third consecutive year, the LEA must continue to offer public school choice and must also make available supplemental educational services to students who remain in the school.

In the case of a school that fails to make adequate yearly progress after two years of improvement, the LEA must identify the school for corrective action and continue to offer public school choice and supplemental educational services to students enrolled in the school. If a school fails to make adequate yearly progress after one year of corrective action, the LEA must identify the school for restructuring and must continue to offer public school choice and supplemental educational services while it prepares a restructuring plan for the school.

The statute also includes transition provisions governing schools identified for improvement or corrective action before the enactment of the NCLB Act:

- An LEA must treat any school that was in improvement on January 7, 2002 as a school that is in the first year of improvement for the 2002–2003 school year.
- An LEA must treat any school that was in improvement for two or more consecutive years on January 7, 2002 as a school in its second year of school improvement for the 2002–2003 school year.
- An LEA must treat any school that was in corrective action on January 7,

2002 as a school that is in corrective action for the 2002–2003 school year.

An LEA may delay for one year the requirements for any school under the second year of improvement, under corrective action, or under restructuring, if (1) the school makes adequate yearly progress for one year or (2) if the school's failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school. However, the LEA may not take into account this period of delay in determining the number of consecutive years of failure to make adequate yearly progress for the purpose of subjecting the school to further improvement actions.

If a school identified for improvement, corrective action, or restructuring makes adequate yearly progress for two consecutive years, the LEA may no longer subject the school to the requirements of improvement, corrective action, or restructuring or identify the school for improvement for the next school year.

Current Regulations: The current regulations governing LEA identification of schools for improvement and corrective action reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, proposed §§ 200.32, 200.33, 200.34, and 200.35 would restate and reorganize the statutory provisions related to the LEA's identification of schools for improvement, corrective action, and restructuring, as well as provisions governing the delay or termination of requirements related to identification.

Proposed § 200.32 clarifies the statutory timeline for identifying schools for improvement. The statute requires the identification to take place ''before the beginning of the school year following such failure to make adequate yearly progress.'' To clarify the meaning of this deadline, proposed § 200.32(a)(2) restates the deadline so that it is clear that the identification must take place ''before the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make adequate yearly progress for a second consecutive year.''

In addition, proposed § 200.32(f) states that if the LEA misses this deadline, the school is nevertheless subject to the requirements of school improvement—including the provision of public school choice options to all students enrolled in the school—upon identification and that the LEA must count that school year as a full year of school improvement for the purpose of subjecting the school to additional improvement measures if it continues to fail to make adequate yearly progress. This proposed regulation is intended to prevent the potential delay of needed improvement measures for an additional year if States and LEAs fail to make identification in accordance with the statutory deadline.

Proposed §§ 200.32 and 200.33 also address identification issues related to schools that are not covered under the statutory transition provisions. More specifically, the statute does not account for the potential impact of the results of assessments administered during the 2001–2002 school year. Proposed § 200.32(d) gives an LEA discretion to remove from improvement status a school that, on the basis of the 2001–2002 assessments, makes adequate yearly progress for a second consecutive year. Similarly, proposed § 200.33(c) permits an LEA to remove from corrective action a school that, on the basis of the 2001–2002 assessments, makes adequate yearly progress for a second consecutive year. Proposed § 200.32(e) permits, but does not require, an LEA to identify for improvement a school that, on the basis of the 2001–2002 assessments, fails to make adequate yearly progress for a second consecutive year.

Reasons: Proposed §§ 200.32, 200.33, 200.34, and 200.35 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. In particular, proposed § 200.32(a)(2) clarifies the statutorily ambiguous deadline for identifying schools for improvement and proposed § 200.32(f) ensures that the school improvement timeline is not thwarted by the failure to meet this deadline.

In addition, proposed § 200.32(d) and (e) and § 200.33(c) apply the statutory provisions for entering and exiting improvement status—two consecutive years of failure to make adequate yearly progress and two consecutive years of making adequate yearly progress, respectively—to schools not covered under the transition provisions in section 1116(f) of the NCLB Act.

Section 200.36 Communication With Parents; § 200.37 Notice of Identification for Improvement, Corrective Action, or Restructuring; and § 200.38 Information About Action Taken

Statute: Under section 1116 of Title I, SEAs and LEAs must keep parents informed throughout the improvement process. In particular, section 1116(b)(6) requires LEAs to provide the parents of each student enrolled in a school identified for improvement, corrective action, or restructuring an explanation of what the identification means, the reasons for the identification, what the school, LEA, and SEA are doing to address the achievement problems that led to the identification, how parents can help the school improve, and the parents' option to transfer their child to another public school or to obtain supplemental educational services for their child.

Current Regulations: The current regulations governing LEA notification of parents during the school improvement process reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.36 clarifies the manner in which SEAs, LEAs, and schools must meet notification requirements under section 1116 by providing guidelines for all communications with parents. These guidelines include the use of an understandable and uniform format for all required notices; the provision, to the extent practicable, of all notices in a language that parents can understand; the use of direct means of communication, such as mailing materials home, as well as broader electronic means such as the Internet; and assurances that all notices respect the privacy of students and their families.

Proposed § 200.37 repeats the statutory requirement to notify parents when the school their child attends is identified for improvement, corrective action, or restructuring. Proposed § 200.37(b)(4) would add to the statutory requirement for an explanation of the public school choice option the inclusion of information on the performance of the schools to which a student may transfer. Proposed § 200.37 also would require LEAs to include in their annual notice of the availability of supplemental educational services the identification of any providers of technology-based or distance-learning services.

Proposed § 200.38 restates the statutory requirement for LEA notification to parents of action taken to

address the problems that led the LEA to identify the school for improvement, corrective action, or restructuring.

Reasons: Proposed §§ 200.36, 200.37, and 200.38 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. The proposed regulations would help ensure that SEAs, LEAs, and schools develop a uniform approach for communicating with parents throughout the school improvement process.

Section 200.39 Responsibilities Resulting From Identification for School Improvement; § 200.40 Technical Assistance; and § 200.41 School Improvement Plan

Statute: Under section 1116(b) of Title I, if an LEA identifies a school for improvement, the LEA must provide all students enrolled in the school with the option to transfer to schools served by the LEA that have not been identified for improvement. The LEA also must ensure that the school receives technical assistance in identifying and addressing the problems that led to the identification for improvement. The school must develop and implement a school improvement plan covering a two-year period that specifies the responsibilities of the school, the LEA, and the SEA under the plan; incorporates scientifically based strategies for strengthening instruction in the core academic subjects; includes annual measurable objectives for helping all student groups make adequate yearly progress; and sets aside 10 percent of the school's Title I allocation for professional development that directly addresses the achievement problems that led the LEA to identify the school for improvement.

The LEA must promptly review the school improvement plan, work with the school to make any necessary revisions, and approve the plan within 45 days of receiving it from the school. The LEA may condition approval of the plan on the inclusion of one of the corrective actions specified in section 1116(b)(7)(C)(iv) of Title I or on feedback from parents and community leaders.

If a school continues to fail to make adequate yearly progress after one year of school improvement, the LEA must continue to offer a public school choice option to students enrolled in the school, continue to provide technical assistance, and make available supplemental educational services to eligible students who remain in the school.

Current Regulations: The current regulations governing LEA and school-level responsibilities when the LEA identifies a school for improvement reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, proposed §§ 200.39, 200.40, and 200.41 restate the statutory requirements related to LEA and school-level responsibilities under the school improvement process, including the LEA's obligation to offer public school choice options and to provide technical assistance and the school's responsibility to develop and implement a comprehensive school improvement plan. Proposed § 200.41(c)(4) also clarifies that school improvement plans must include measurable goals that address the specific reasons for the school's failure to make adequate yearly progress. This proposal is intended to eliminate possible confusion between the goals in the improvement plan and the State-level annual measurable objectives established under section 1111 for the purpose of determining adequate yearly progress.

Proposed § 200.41(c)(5) would increase flexibility in the use of the 10 percent set-aside for professional development under the school improvement plan by making instructional staff other than teachers and principals eligible for these professional development activities.

Reasons: Proposed §§ 200.39, 200.40, and 200.41 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.42 Corrective Action; and § 200.43 Restructuring

Statute: Under section 1116(b)(7) of Title I, if an LEA identifies a school for corrective action, it must continue to provide all students enrolled in the school with the option to transfer to another public school, continue to ensure that the school receives technical assistance, continue to make available supplemental educational services to students who remain in the school, and take at least one of the corrective actions specified in the statute. These corrective actions include replacing the school staff, implementing a new curriculum, decreasing management authority at the school, appointing an outside expert to advise the school, extending the school day or year, and reorganizing the school internally.

If an LEA identifies a school for restructuring, it must continue to provide a public school choice option and make available supplemental educational services while preparing a plan to carry out an alternative governance arrangement specified in the statute. These alternative governance arrangements include reopening the school as a public charter school, replacing all or most of the school staff, entering into a contract with a private management company to operate the school as a public school, turning over operation of the school to the SEA, or any other major restructuring of a school's governance arrangements.

If the school continues to fail to make adequate yearly progress, the LEA must implement its restructuring plan no later than the beginning of the school year following the year in which it identified the school for restructuring.

Current Regulations: The current regulations governing corrective action reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act, and restructuring is a new requirement under the NCLB Act.

Proposed Regulations: In general, §§ 200.42 and 200.43 restate the statutory requirements related to corrective action and restructuring. Proposed § 200.42(b)(4)(iv)(A) and (B) clarify that the purpose of appointing an outside expert as a corrective action is to help revise the school improvement plan developed under § 200.41 and implement the revised plan.

Reasons: Proposed §§ 200.42 and 200.43 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.44 Public School Choice

Statute: Under section 1116(b) of Title I, if an LEA identifies a school for improvement, corrective action, or restructuring it must provide each student enrolled in the school with the option to transfer to another public school served by the LEA that is not identified for improvement, corrective action, or restructuring, unless such an option is prohibited by State law. The LEA must provide the option to transfer no later than the first day of the school year following the identification for improvement, corrective action, or restructuring, and must provide or pay for the transportation of the student to the school the student chooses to attend.

In providing students the option to transfer, the LEA must give priority to the lowest-achieving students from low-income families. If a student exercises

the option to transfer to another public school, the LEA must permit the student to remain in that school until the student has completed the highest grade in the school. However, the LEA's obligation to provide transportation ends at the end of a school year if the school from which the student transferred is no longer identified for improvement, corrective action, or restructuring.

Current Regulations: The public school choice requirement is new under the NCLB Act and not covered under current regulations.

Proposed Regulations: Proposed § 200.44 restates and reorganizes the statutory provisions in section 1116(b) related to public school choice. The proposed regulations also clarify the statutory deadline by requiring LEAs to provide a choice option not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in the identification of the school for improvement, corrective action, or restructuring.

In addition, proposed § 200.44(a)(4) would require LEAs to offer the parents of each eligible student a choice of more than one school, if there is more than one school within the LEA that has not been identified for improvement, corrective action, or restructuring, and to take into account the parents' preferences in assigning students to a new school.

Proposed § 200.44(b) would clarify that the statutory exception from the public school choice requirements where choice is prohibited by State law applies only if the State law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school. Proposed § 200.44(c) clarifies that LEA implementation of a desegregation plan does not exempt the LEA from the public school choice requirement in section 1116(b) of Title I.

Proposed § 200.44(f) and (h) would limit an LEA's obligation to provide or pay for choice-related transportation due to insufficient funding resulting from the application of § 200.48.

Reasons: Proposed § 200.44 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. Proposed § 200.44(a)(2) clarifies the deadline for providing choice to be consistent with the statutory requirement that identification for improvement, corrective action, or restructuring occur prior to the beginning of the school year.

Proposed § 200.44(a)(4) would empower parents by ensuring, wherever possible, that they have the option of choosing, from among several options, the school that best meets the educational needs of their child.

Proposed § 200.44(b) and (c) are intended to prevent LEAs from arbitrarily invoking either State law or desegregation plans in seeking an exemption from the public school choice requirement. Proposed § 200.44(f) and (h) reflect the interpretation under § 200.48 that the statute caps the set-aside for choice-related transportation and supplemental educational services at an amount equal to 20 percent of an LEA's allocation under subpart A of this part, thereby limiting the LEA's obligation to satisfy all requests for choice-related transportation.

Proposed §200.44(i) clarifies that for children with disabilities, the public school choice option must provide a free and appropriate public education.

Section 200.45 Supplemental Educational Services; § 200.46 LEA Responsibilities for Supplemental Educational Services; and § 200.47 SEA Responsibilities for Supplemental Educational Services

Statute: Section 1116(e) of Title I defines supplemental educational services as tutoring and other academic enrichment services designed to increase the academic achievement of eligible students and help them attain proficiency in meeting State academic achievement standards. If an LEA has identified a school for a second year of school improvement, for corrective action, or for restructuring, it must arrange for supplemental educational services for each eligible student from a State-approved provider selected by the student's parents. Eligible students are defined in the statute as students from low-income families, and if funding is insufficient to provide services to all such students, LEAs must give priority to the lowest-achieving eligible students.

SEAs must promote participation by as many providers as possible, develop criteria for approval as a provider that are based on a demonstrated record of effectiveness in increasing student achievement in subjects relevant to meeting State academic content and achievement standards, maintain an updated list of providers from which parents may select, and monitor the quality and effectiveness of approved providers.

An LEA making available supplemental educational services must, funding permitting, continue to make available such services until the end of the school year. An SEA may waive the requirement for an LEA to provide supplemental educational services if none of the providers on the State's list make services available within a reasonable distance of the LEA and if the LEA itself is not able to provide the services.

Current Regulations: The requirement to provide supplemental educational services is new under the NCLB Act and not covered under current regulations.

Proposed Regulations: In general, proposed §§ 200.45, 200.46, and 200.47 repeat the statutory requirements for the provision of supplemental educational services. Proposed § 200.47 would modify the standards for SEA approval of providers to clarify that supplemental service providers may include a non-profit entity, a for-profit entity, a public school, including a public charter school, a private school, or an LEA. The proposed § 200.47 also would prohibit schools that are identified for improvement, corrective action, or restructuring from being a provider.

Reasons: Proposed §§ 200.45, 200.46, and 200.47 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Examples of evidence from a provider that may demonstrate effectiveness include the following:

- Significant improvement in student academic achievement as measured by statewide assessments;
- Successful use of instructional practices based on research;
- Successful and sustained remediation of reading/language arts or math difficulties, such as bringing students up to grade-level standards.

Section 200.48 Funding for Choice-Related Transportation and Supplemental Educational Services

Statute: Section 1116(b)(10) of Title I requires LEAs to make available funding to pay for transportation costs related to the provision of public school choice options and for supplemental educational services. In general, affected LEAs must spend an amount equal to 20 percent of their allocation under subpart A of this part to pay for choice-related transportation, supplemental educational services, or a combination of the two. In reserving such funds, an LEA may not reduce by more than 15 percent the allocation it provides to a

school identified for corrective action or restructuring.

LEAs must use, at a minimum, an amount equal to five percent of their allocations under subpart A of this part to pay for supplemental educational services, if parents request such services. SEAs may use funds reserved for State-level activities under subpart A of this part and under part A of Title V to assist LEAs that do not have sufficient funds to satisfy all requests for supplemental educational services. For each student receiving such services, the LEA must make available the lesser of the LEA's per-child allocation under subpart A of this part or the actual cost of services.

Current Regulations: The requirement to reserve funding for choice-related transportation and supplemental educational services is new under the NCLB Act and not covered under current regulations.

Proposed Regulations: Proposed § 200.48 would clarify statutory ambiguity regarding the reservation of funding to pay for choice-related transportation and supplemental educational services. Specifically, the proposed regulation would require LEAs to spend an amount equal to 20 percent of their allocation under subpart A of this part to provide or pay for the transportation of students exercising a choice option, to satisfy all requests for supplemental educational services, or a combination of the two. Proposed § 200.48 clarifies that LEAs may use funds allocated under subpart A of this part, from other Federal education programs, or from State, local, or private resources to satisfy this requirement.

Proposed § 200.48 also clarifies that if the costs of satisfying all requests for supplemental educational services exceed an amount equal to 5 percent of an LEA's allocation under subpart A of this part, the LEA may not spend less than this amount for supplemental educational services. In addition, the proposed regulations would permit—but not require—LEAs to exceed the 20 percent cap to pay all choice-related transportation costs and to meet the demand for supplemental educational services.

Reasons: Proposed § 200.48 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.49 SEA Responsibilities for School Improvement, Corrective Action, and Restructuring

Statute: Sections 1003 and 1116 of Title I include various provisions relating to SEA responsibilities in the school improvement process. Section 1116(f) requires an SEA to ensure that LEAs serving schools identified for improvement or corrective action prior to enactment of the NCLB Act provide public school choice options and make available supplemental educational services, as appropriate, not later than the first day of the 2002–2003 school year.

Section 1003 requires SEAs to reserve two percent of the amounts received under subpart A of this part, rising to four percent in fiscal year 2004, to support local school improvement activities and to provide technical assistance to schools that LEAs have identified for improvement, corrective action, or restructuring and to LEAs that the SEA has identified for improvement or corrective action. SEAs must allocate not less than 95 percent of these funds directly to LEAs serving schools identified for improvement, corrective action, and restructuring, with a priority on LEAs serving the lowest-achieving schools and demonstrating the greatest need for assistance.

SEAs also must ensure that the results of academic assessments in a given school year are available to LEAs before the beginning of the next school year, and that such results are provided to a school before an LEA may identify the school for school improvement, corrective action, or restructuring.

Current Regulations: The current regulations governing SEA responsibilities related to school improvement reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.49 repeats and reorganizes the statutory requirements related to SEA responsibilities in the school improvement process.

Reasons: Proposed § 200.49 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.50 SEA Review of LEA Progress

Statute: Under section 1116(c) of Title I, SEAs must annually review the progress of each LEA receiving funds under subpart A of this part to determine whether the LEA is making adequate yearly progress toward meeting the State's student academic achievement standards and whether the LEA is carrying out its responsibilities under subpart A of this part with respect to technical assistance, parental involvement, and professional development. After providing an LEA with the opportunity to review academic assessment data, the SEA must identify for improvement an LEA that has failed to make adequate yearly progress for two consecutive years.

The SEA must identify for corrective action an LEA that fails to make adequate yearly progress for two consecutive years following the identification for improvement. The SEA may delay corrective action if the LEA makes adequate yearly progress for one year or if the LEA's failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the LEA's financial resources.

The SEA may remove from improvement or corrective action status an LEA that makes adequate yearly progress for two consecutive years, and may provide rewards to LEAs that exceed adequate yearly progress for two consecutive years.

Current Regulations: The current regulations governing SEA review of LEA progress reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, proposed § 200.50 repeats the statutory requirements related to SEA review of LEA progress in helping all students meet State academic achievement standards.

In addition, proposed § 200.50 clarifies the circumstances under which an SEA may include, in its review of an LEA serving schools operating targeted assistance programs, only the progress of students served or eligible for services under subpart A of this part. Proposed § 200.50(d)(2) clarifies the timeline for identifying LEAs for corrective action to be consistent with the statutory requirement that such identification occur prior to the beginning of the school year.

Proposed § 200.50(d) and (e) also clarify SEA discretion in identifying LEAs for improvement or removing LEAs from improvement or corrective action status on the basis of assessments administered during the 2001–2002 school year.

Reasons: Proposed § 200.50 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of

and compliance with those requirements. Specifically, the proposed regulation clarifies the identification timeline for LEA corrective action and applies the statutory provisions for entering and exiting improvement status—two consecutive years of failure to make adequate yearly progress and two consecutive years of making adequate yearly progress, respectively—to LEAs not covered by the transition language in section 1116(f) of the NCLB Act.

Section 200.51 Notice of SEA Action

Statute: Under section 1116(c) of Title I, an SEA must publicize and disseminate the results of its review of an LEA to the LEA, teachers and other staff, parents, students, and the community. If an SEA identifies an LEA for improvement or corrective action, it must provide to the parents of each student enrolled in a school served by the LEA the reasons for the identification and an explanation of how the parents can participate in upgrading the LEA. The SEA also must publish and disseminate to parents and the public information on any corrective action it takes against an LEA.

Current Regulations: The current regulations governing SEA notice requirements related to its review of LEA progress reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, proposed § 200.51 restates the statutory notice requirements triggered when an SEA reviews the progress of an LEA under § 200.50. Proposed § 200.51 also clarifies the manner in which SEAs must meet these notification requirements by providing guidelines for all communications with parents. These guidelines include the use of an understandable and uniform format for all required notices; the provision, to the extent practicable, of all notices in a language that parents can understand; the use of direct means of communication, such as sending materials home with students, as well as broader electronic means such as the Internet; and assurances that all notices respect the privacy of students and their families.

Reasons: Proposed § 200.51 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. The proposed regulations would help ensure that SEAs develop a uniform approach for communicating with parents throughout the LEA review and improvement process.

Section 200.52 LEA Improvement; and § 200.53 LEA Corrective Action

Statute: Under section 1116(c) of Title I, if an SEA identifies an LEA for improvement, the LEA must develop or revise an LEA improvement plan that incorporates scientifically based strategies to strengthen instruction in core academic subjects in schools served by the LEA, addresses the professional development needs of the LEA's instructional staff by reserving for that purpose not less than 10 percent of the funds received by the LEA under subpart A of this part, and includes specific measurable goals and targets consistent with adequate yearly progress requirements. The improvement plan also must incorporate extended learning time strategies, specify LEA and SEA responsibilities under the plan, and promote effective parental involvement. At the request of the LEA, the SEA must provide or arrange for technical or other assistance in developing and implementing the improvement plan. The LEA must implement its improvement plan not later than the beginning of the school year after the school year in which the SEA identified the LEA for improvement.

If an SEA identifies an LEA for corrective action, it must continue to make available technical assistance to the LEA and take at least one of the corrective actions specified in the statute. These corrective actions include deferring programmatic funds or reducing administrative funds, instituting a new curriculum, replacing LEA personnel, removing particular schools from the jurisdiction of the LEA and establishing alternative governance for these schools, appointing a receiver or trustee to administer the LEA in place of the superintendent and school board, and abolishing or restructuring the LEA. In addition, in conjunction with at least one of these actions, the SEA may authorize students to transfer, with transportation provided, from a school operated by the LEA to a higher-performing public school operated by another LEA.

Current Regulations: The current regulations governing LEA improvement and corrective action reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, §§ 200.52 and 200.53 restate the statutory requirements for LEA improvement and corrective action. Proposed § 200.52(a)(4) also clarifies that an LEA must implement its improvement plan not later than the beginning of the school year following the year in which the LEA administered the assessments that resulted in the SEA's identification of the LEA for improvement.

Reasons: Proposed §§ 200.52 and 200.53 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of, and compliance with, those requirements. Proposed § 200.52(a)(4) clarifies the deadline for implementation of an LEA's improvement plan to be consistent with the statutory requirement that such implementation occur prior to the beginning of the school year following the identification for improvement.

Section 200.54 Rights of School and School District Employees

Statute: Section 1116(d) of Title I provides that none of the requirements concerning school and LEA improvement, corrective action, and restructuring shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or LEA employees under Federal, State, or local law (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between the employers and their employees.

Current Regulations: The current regulations do not address this requirement.

Proposed Regulations: Section 200.54(a) implements the statutory provision with respect to State or local laws or collective bargaining agreements in effect on January 8, 2002—the day the NCLB Act was signed into law. Section 200.54(b) makes clear, however, that any State or local laws, regulations, or policies adopted after January 8, 2002 may not exempt an LEA from taking actions it may be required to take by §§ 200.30–200.53 with respect to school and LEA employees. Similarly, § 200.54(c) requires an LEA to ensure that any collective bargaining agreements, memoranda of understanding or other similar agreements negotiated after January 8, 2002 do not prohibit actions that the LEA may be required to take with respect to school or school district employees to implement §§ 200.30–200.53.

Reasons: These proposed regulations are necessary to clarify that the statutory provision applies to laws, regulations, and agreements in effect on January 8, 2002. States and LEAs, however, have affirmative responsibilities to ensure that laws, regulations, policies, and agreements that take effect after January 8 do not prohibit actions that an LEA or

State may be required to take to implement §§ 200.30–200.53.

Qualifications of Teachers and Paraprofessionals

Sections 200.55 through 200.57 Highly Qualified Teachers

Statute: Under section 9101(23) of the ESEA, a highly qualified teacher in any public elementary or secondary school must hold at least a bachelor's degree and either (1) have obtained full State teacher certification or (2) have passed the State teacher licensing examination and hold a license to teach in that State. A teacher in a public charter school may instead meet the certification or licensure requirements of the State's public charter school law. No highly qualified teacher may have his or her certification or licensure requirements waived on an emergency, temporary, or provisional basis.

Section 9101(23) of the ESEA contains additional requirements for a highly qualified teacher depending on which grade level the teacher teaches and whether the teacher is new to the profession. An elementary school teacher who is new to the profession must have demonstrated subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum by passing a rigorous State test. Passing a rigorous State test can mean passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum.

A middle or secondary school teacher who is new to the profession must have demonstrated a high level of competency in each academic subject that he or she teaches by (1) passing a rigorous State academic subject test in each of those subjects or (2) successfully completing, in each of those subjects, an academic major, coursework equivalent to an undergraduate academic major, a graduate degree, or advanced certification or credentialing. Passing the rigorous State test can mean receiving a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects that the teacher teaches.

To be highly qualified, an elementary, middle, or secondary school teacher who is not new to the profession must meet the applicable requirements for a new teacher or must demonstrate competence in all academic subjects that he or she teaches based on a high objective uniform State standard of evaluation. To be considered a high objective uniform standard of evaluation, the State standard may involve multiple, objective measures of teacher competency and must satisfy these six criteria:

- Be set both for grade-appropriate academic subject matter knowledge and for teaching skills.
- Be aligned with challenging State academic content and student academic achievement standards and developed through consultation with core content specialists, teachers, principals, and school administrators.
- Provide objective and coherent information about the teacher's attainment of the core content knowledge in the applicable academic subject.
- Be applied uniformly to all teachers in the same academic subject and grade level throughout the State.
- Take into consideration, although not primarily, the time the teacher has been teaching the subject.
- Be available to the public on request.

Under section 1119(a)(1) of the ESEA, beginning with the first day of the 2002–2003 school year, each LEA receiving assistance under Title I, part A is responsible for applying these requirements to any public school teacher in a core academic subject supported by part A funds who is hired after that day. The LEA also must have a plan to ensure that all public school teachers teaching in core academic subjects in the LEA meet these requirements by the end of the 2005–2006 school year.

At the State level, section 1119(a)(2) of the ESEA requires each State to develop a plan to ensure that all teachers teaching in core academic subjects in the State meet these requirements by the end of the 2005–06 school year. The State plan must set annual measurable objectives for each LEA and school. At a minimum, these objectives must provide for an increase in the percentage of highly qualified teachers in each LEA and school and an annual increase in the percentage of teachers receiving high-quality professional development toward becoming highly qualified and successful. The objectives may include other appropriate measures to improve teacher qualifications.

Proposed Regulations: In addition to incorporating the statutory provisions described above, proposed §§ 200.55 through 200.57 would clarify that the requirements for teacher qualifications apply to teachers in core academic subjects. Proposed § 200.55(a)(2) would clarify that a teacher in a program supported by funds under subpart A of this part is a teacher in a targeted assistance program paid with Title I, part A funds and any teacher in a schoolwide program. Proposed § 200.56(a)(1)(iii) would clarify that a teacher meets the full certification and licensure requirements applicable to the years of experience the teacher possesses. For example, a first-year teacher would meet this requirement if State law requires that teacher to work on a probationary basis for a limited time. Proposed § 200.56(a)(1)(iii) would also clarify that a teacher meets the alternate route certification program requirements if the State permits the teacher to assume functions as a teacher and if the teacher is making satisfactory progress toward full certification as prescribed by the State and the program.

A teacher who does not teach a core academic subject, or an employee of a third-party contractor or supplemental services provider, would not be required to meet the teacher qualification requirements.

Reasons: Most of the provisions in proposed §§ 200.55 through 200.57 would clarify unclear areas of the statute. Exempting teachers who do not teach in core academic subjects from the teacher qualification requirements, for example, would recognize and encourage the traditional flexibility that States have exercised in setting qualification standards in such areas as vocational education. Yet extending this flexibility would not jeopardize the statute's overall objective of ensuring that, through high-quality instruction, all students reach proficient levels of State academic student achievement standards.

Sections 200.58 through 200.59 Paraprofessionals

Statute: Section 1119(c) through (g) of the ESEA contains requirements that apply to all paraprofessionals working in a program supported with Title I, part A funds and specify how each LEA receiving assistance under part A must ensure that those paraprofessionals meet those requirements.

Under section 1119(a), each paraprofessional hired after January 8, 2002, must have—

(1) Completed at least two years of study at an institution of higher education;

(2) Obtained an associate's or higher degree; or

(3) Met a rigorous standard of quality and be able to demonstrate, through a formal State or local academic assessment, knowledge of, and the ability to assist in instructing reading, writing, and mathematics or, as appropriate, in reading readiness,

writing readiness, and mathematics readiness.

Section 1119(d) requires a paraprofessional hired before January 8, 2002, to meet these requirements within four years of that date. Section 1119(e) excepts from these requirements a paraprofessional who serves primarily as a translator, if the paraprofessional is proficient in English and a language other than English. Section 1119(e) also excepts a paraprofessional working solely on parental involvement activities.

Section 1119(f) of the ESEA requires all paraprofessionals, regardless of hiring date, to have earned a secondary school diploma or the recognized equivalent.

Section 1119(g) of the ESEA specifies that a paraprofessional may provide one-on-one tutoring for eligible students, provided the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher; assist with classroom management, such as organizing instructional and other materials; provide assistance in a computer laboratory; conduct parental involvement activities; provide support in a library or media center; act as a translator; or provide, under the direct supervision of a teacher, instructional services.

Section 1119(g)(3) allows a paraprofessional to assume limited duties assigned to similar personnel who do not work in a program supported with part A funds. Those duties may include duties beyond classroom instruction or duties that do not benefit participating children, if the paraprofessional spends the same proportion of time on those duties that similar personnel in the school spend on the same duties.

Proposed regulations: Proposed §§ 200.58 and 200.59 would incorporate the statutory provisions governing paraprofessionals. In addition, proposed § 200.58(a)(2) would clarify that the term ''paraprofessional'' applies to an individual performing instructional support duties and not to an individual performing only non-instructional duties. Proposed § 200.58(a)(3) would clarify that a paraprofessional in a program supported by funds under subpart A of this part means a paraprofessional in a targeted assisted program paid with those funds and any paraprofessional in a schoolwide program.

Proposed § 200.59(b) would clarify the duties that paraprofessionals may perform. Proposed § 200.59(c)(2) would clarify that a paraprofessional works under the direct supervision of a teacher if the teacher plans the paraprofessional's instructional activities and evaluates the achievement of the students with whom the paraprofessional works. The paraprofessional also would be required to work in close physical proximity of the teacher.

Reasons: The clarifications in proposed §§ 200.58(a)(2) and 200.59(b) would reinforce the consistent application of the statutory concept that paraprofessional qualification requirements apply to the performance of instructional support duties. The clarification in proposed § 200.59(c)(2) on what would constitute working under the direct supervision of a teacher is intended to reinforce the statutory safeguards against the improper use of paraprofessionals to provide actual instruction.

Section 200.60 Expenditures for Professional Development

Statute: Section 1119(h) allows an LEA to use funds under Title I, part A for ongoing training and professional development to help teachers and paraprofessionals meet the new statutory requirements governing their qualifications.

Section 1119(l) requires the LEA, for each of fiscal years 2002 and 2003, to use a minimum of 5 percent and a maximum of 10 percent of its part A funds for professional development aimed at ensuring that teachers who are not qualified become highly qualified by the end of the 2005–2006 school year. For each subsequent fiscal year, the LEA must use a minimum of 5 percent of its part A funds for that purpose. Section 1119(j) of the ESEA permits an LEA to combine part A funds used for professional development with other Federal funds, including those from Title II of the ESEA, and funds from other sources.

Section 1119(k) prohibits a State from mandating, beyond the amounts specified in section 1119(l), the specific amount that an LEA, other than an LEA identified for improvement, may spend for professional development.

Proposed Regulations: Proposed § 200.60(a) would clarify that professional development funds may be used for paraprofessionals, as well as teachers. It also would clarify that the statutory minimum would not apply to an LEA, if most teachers and paraprofessionals in the LEA's school district already meet the statutory qualification requirements. Proposed § 200.60(b) would clarify that an LEA may use additional funds under subpart A of this part for ongoing training and professional development to help teachers and paraprofessionals carry out their subpart A activities.

Reasons: Proposed § 200.60(a) is needed to ensure consistent application of the requirements in section 1119 and elsewhere in the ESEA that permit flexibility in the use of funds for professional development. The requirements in section 1119 contemplate that an LEA will give priority for the use of professional development expenditures to helping teachers and paraprofessionals meet the requirements for highly qualified teachers and the qualifications for paraprofessionals, respectively. Nevertheless, in cases where that priority has been met, and to help teachers and paraprofessionals carry out their activities under subpart A, funds under subpart A remain available, notwithstanding the mandated percentages in section 1119, to an LEA for ongoing training and professional development.

Participation of Eligible Children in Private Schools

Statute: Section 1120 of Title I requires LEAs to provide on an equitable basis educational services or other benefits (1) to eligible children attending private schools; and (2) to the teachers and families of these children in Title I—supported parent involvement and professional development activities. It requires LEAs to develop these services in consultation with officials of the private schools and prescribes how an LEA determines that it is providing services on an equitable basis.

Current Regulations: The current regulations governing equitable participation of eligible children in private schools (34 CFR 200.10 through 200.13) implement provisions of section 1120 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed §§ 200.61 through 200.66 contain several provisions to address changes in the statute from the previous law and to clarify issues about which questions have arisen in the past. The proposed regulations would—

- Reiterate which children an LEA must serve;
- Clarify the equal expenditure requirement for instructional services;
- Define equitable expenditures for teachers and families of participating private school children;
- Require consultation on specified topics and expand those topics to include equitable services to teachers and families of participating private school students; and

• Clarify the flexibility that exists for private school officials to appoint representatives for consultation and sign-off purposes.

Additionally, the proposed regulations would remove regulations governing capital expenses (currently contained in §§ 200.15 through 200.17), because the authority for capital expenses expires October 1, 2003 and no funds were appropriated for fiscal year 2002.

Reasons: The existing regulations need to be updated to reflect the changes made by the NCLB Act. The proposed regulations also facilitate implementation of the requirements for providing services to eligible private school students, their teachers, and their families by ensuring that both public and private school officials have consistent and accurate information to implement fully the requirements of this section. Finally, the proposed regulations remove current provisions that are no longer needed.

Allocations to LEAS

Statute: Title I, part A, subpart 2 establishes the formulas the Secretary must use to determine LEA allocations for Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants (EFIG). The Secretary makes allocations to LEAs for all four programs using data that include children ages 5 through 17 in families with incomes below the poverty line based on the most recent satisfactory data available from the Census Bureau, in families not in poverty but receiving assistance under the Temporary Assistance for Needy Families program, in foster homes, and in locally operated institutions for neglected children. These data are then adjusted to account for each State's per-pupil expenditure for education. The Targeted Grants program further requires that the Secretary adjust the number of children counted in the formula to give greater weight to those LEAs that have higher numbers or percentages of formula children. The formula for EFIG, in addition to including the number of children counted in the Title I formula and each State's per-pupil expenditure, uses two other factors that measure (1) a State's effort to provide financial support for education compared to its relative wealth based on its per capita income (fiscal effort factor) and (2) the degree to which education expenditures among school districts within a State are equalized (equity factor). Once a State's EFIG allocation is determined using all four of these factors, the Secretary distributes funds among LEAs within a State using a process similar to Targeted Grants by giving a greater weight to those LEAs that have higher numbers or percentages of formula children. The weights used to determine EFIG allocations for each LEA will vary for each State depending on its equity factor. After initial LEA allocations are determined for all four programs using the factors described, the Secretary must guarantee that no LEA (depending on its formula child rate) receives less than 85, 90, or 95 percent of the amount allocated to it in the preceding year and ensure that no State in total receives less than the minimum amount prescribed in the statute.

Title I further authorizes States to use alternative data to determine eligibility and redistribute allocations that the Secretary determined for its ''small'' LEAs with fewer than 20,000 residents. This provision in the law responds to concerns about the quality of census poverty estimates for small LEAs, which account for roughly 79 percent of all districts nationally, but serve only 24 percent of all school-age children. Under this provision, SEAs have the flexibility to use alternative data, which the Secretary must approve, that better reflect the location of poor children among small LEAs in a State.

Current Regulations: The current regulations (contained in 34 CFR 200.20 through 200.26) outline procedures that an SEA uses to sub-allocate county Title I, part A allocations determined by the Secretary to LEAs. Because the Secretary now makes Title I, part A allocations directly to LEAs rather than to counties, these regulations are no longer applicable and would be replaced by the proposed regulations.

Proposed Regulations: Proposed §§ 200.70 through 200.75 would outline procedures SEAs must follow to adjust allocations determined by the Secretary to account for unique situations within their States.

Proposed § 200.70 would outline the general process that the Secretary follows to determine Title I, part A LEA allocations and establish the principle that an SEA may change those allocations in limited instances.

Proposed § 200.71 would clarify the eligibility thresholds for Basic Grants, Concentration Grants, Targeted Grants, and EFIG. For Basic Grants, an LEA is eligible if the number of children counted for allocation purposes is at least 10 and exceeds two percent of its school-age population ages 5 through 17. An LEA is eligible for a Concentration Grant if it is eligible for a Basic Grant and the number of formula children exceeds 6,500 or 15 percent of its school-age population. To be eligible for a Targeted Grant and EFIG, an LEA must have at least 10 formula children and a formula child rate of at least 5 percent. Targeted Grant and EFIG eligibility is based on the raw number of formula children without application of the weights provided in the statute.

Proposed § 200.72 would establish the general procedures an SEA must follow to adjust allocations determined by the Secretary to account for eligible ''new'' LEAs not on the Census list that the Secretary used to calculate LEA allocations and to reflect changes in district boundaries. Under this section, an SEA must first determine the number of Title I formula children for new LEAs that are not on the Secretary's list of LEAs, second determine the eligibility of these new LEAs for a Basic, Concentration, Targeted, and EFIG based on that number, and third provide the new LEAs with Title I funds based on the number of formula children that they draw from the LEAs that are on the Secretary's list for which the Department made allocations.

Proposed § 200.73 would outline 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. Under each program, an LEA is guaranteed at least 85, 90, or 95 percent of the amount received in the preceding year. The hold-harmless percentage varies according to each LEA's formula child rate. For Targeted Grants and EFIG, the hold-harmless percentage is based on formula counts without application of the weights. Except when an SEA is calculating LEA reductions to account for reserves for school improvement, State administration, and the State academic achievement awards program, the hold-harmless percentage is applied separately for Basic Grants, Concentration Grants, Targeted Grants, and EFIG. With the exception of Concentration Grants, an LEA must be eligible for Basic Grants, Targeted Grants, and EFIG in order for the hold-harmless protection to apply. For Concentration Grants an LEA is entitled to its hold-harmless percentage based on its prior year amount for four consecutive years even if it no longer meets the eligibility thresholds.

Proposed § 200.74 would clarify the statutory procedures an SEA would follow if it chooses to use an alternative method to redistribute Title I, part A grants to LEAs with fewer than 20,000 total residents. Language in proposed § 200.74(a) would extend this flexibility to EFIG.

Proposed § 200.75 would outline the flexibility available to States in which their Title I formula count on January 8,

2002 makes up less than .25 percent of the national total. These ''small'' States may redistribute Concentration Grant allocations determined by the Secretary to LEAs in which the number or percentage of formula children equals or exceeds the Statewide average number or percentage.

Reasons: The proposed regulations are needed to give guidance to States on how to adjust the LEA allocations determined by the Secretary to account for circumstances unique to each State. The Secretary determines LEA allocations directly using a list of LEAs provided to us by the Census Bureau, which is based on LEAs that existed in school year 1999–2000. Because that list does not match the current universe of LEAs in many States, SEAs must adjust the Secretary's LEA allocations to account for newly created LEAs (*e.g.* charter schools and LEA consolidations) and district boundary changes. An SEA must also adjust our allocations to (1) reserve funds for school improvement, State administration, and the State academic achievement awards programs, (2) allow for the use of alternative data to redistribute Title I allocations determined by the Secretary among districts with fewer than 20,000 total residents, and (3) in the case of ''small'' States, redistribute Concentration Grant allocations determined by the Secretary to LEAs in which the number or percentage of formula children equal or exceed the Statewide average number or percentage of formula children.

In outlining SEA procedures for adjusting our allocations in the proposed regulations, we have tried to give SEAs as much flexibility as possible. For example, in proposed § 200.72 concerning a State's use of alternative data to redistribute allocations determined by the Secretary, we believe it appropriate to extend that flexibility to EFIG even though the statute specifically authorizes this flexibility only for Basic, Concentration, and Targeted Grants.

Section 200.78 Allocation of Funds to School Attendance Areas and Schools

Statute: Section 1113 of the Title I statute lays out the procedures an LEA must use to determine school-level Title I allocations once it receives its final allocation from the State. In calculating school-level allocations, an LEA must first determine which school attendance areas or schools are eligible to participate in Title I. As a general rule, a school attendance area is eligible if its percentage of children from low-income families is above 35 percent poverty or is at least as high as the percentage of children from low-income families in the LEA as a whole. An LEA may also serve a school in an ineligible area if the percentage of children from low-income families enrolled in that school is equal to, or greater than, the percentage of such children in a participating school attendance area. The statute also allows an LEA to continue serving an attendance area or school for one more year if it has become ineligible.

An LEA must serve eligible schools or attendance areas in rank order according to their poverty percentage. An LEA must serve those areas or schools above 75 percent poverty, including any middle or high schools, before it serves any with a poverty percentage below 75 percent. Once all of the attendance areas or schools with a poverty rate above 75 percent have been served, an LEA may serve lower-poverty areas and schools either by continuing with the district-wide ranking or by ranking its areas or schools below 75 percent poverty according to grade-span groupings.

When calculating the total number of children from low-income families, the LEA must include children from low-income families who reside in a participating area and attend private schools. If the same poverty data for public and private school children are not available, an LEA may use comparable poverty data for private school children. If complete actual poverty data are not available on private school children, an LEA may extrapolate, from actual data on a representative sample of private school children, the number of children from low-income families who attend private schools. An LEA may also correlate sources of data or apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that area. If an LEA selects a public school to participate on the basis of enrollment, rather than because it serves an eligible school attendance area, the LEA must determine an equitable way to count poor private school children in order to calculate the amount of Title I funds available to serve private school children. In making this determination an LEA must consult with private school officials.

If an LEA serves any attendance area with a poverty rate less than 35 percent, the LEA must allocate to all its participating school attendance areas or schools an amount per poor child that equals at least 125 percent of the LEA's part A allocation per poor child. If an LEA serves only areas with a poverty rate greater than 35 percent, it must allocate funds in rank order on the basis of the total number of poor children in each area or school but is not required to allocate a per-pupil amount of at least 125 percent.

Proposed Regulations: Proposed §§ 200.77 and 200.78 would clarify the within-district allocation procedures in section 1113 of the statute. Because the section 1113 requirements in the new law are largely the same as the old law, the proposed regulations change little from the old regulations.

Proposed § 200.77 would clarify what funds an LEA must reserve before allocating funds to school attendance areas and schools. An LEA must, for example, reserve funds needed to provide comparable services to children in local institutions for neglected children and for homeless children. An LEA is also required to reserve funds, as appropriate, to meet the (1) transportation and supplemental services requirements in § 200.48, unless the LEA meets those requirements with non-Title I funds, (2) the professional development requirements for LEAs identified for improvement under section 1116(c)(7)(A)(iii), (3) the professional development needs of teachers who are not highly qualified under section 1119(l), and (4) the parental support and involvement requirements in section 1118(a)(3)(A). An LEA may further reserve funds to meet the needs of children in local institutions for delinquent children and of neglected or delinquent children in community day school programs, to provide financial incentives and rewards (not to exceed 5 percent of the amount received by the LEA under Title I, part A) for teachers who serve schools identified for improvement, and to conduct other authorized activities such as school improvement and coordinated services.

Reasons: The proposed regulations are needed to clarify statutory provisions concerning how LEAs allocate Title I funds within school districts.

Fiscal Requirements

Section 200.79 Exclusion of Supplemental State and Local Funds From Supplement, Not Supplant and Comparability Determinations

Statute: Under section 1120A(d) of Title I, an LEA may exclude supplemental State and local funds from supplement, not supplant and comparability determinations if those supplemental funds meet the intent and purposes of Title I.

Current Regulations: Section 200.63 of the current regulations clarifies a similar provision in the old law by describing what criteria a State or local program

must meet in order to be excluded from supplement, not supplant and comparability determinations.

Proposed Regulations: Proposed § 200.79 would continue the provisions contained in § 200.63 of the current regulations by clarifying the criteria a State or local program must meet in order to be excluded from supplement, not supplant and comparability determinations. Section 200.79(b)(1)(i) reflects the change in the poverty threshold for schoolwide programs under section 1114.

Reasons: Proposed § 200.79 is needed to provide continued guidance to LEAs on what criteria a State or local program must fulfill in order to meet the intent and purposes of Title I.

Subpart C—Migrant Education Program

Subpart C of this part contains the program-specific regulations for the Migrant Education Program (MEP) authorized under Title I, part C of the statute. The proposed MEP regulations contained in §§ 200.81 through 200.88 are intended to clarify ambiguous or unclear provisions of the statute and replace §§ 200.40 through 200.45 of the current regulations.

Section 200.81 Program Definitions

Statute: Section 1309 of Title I provides a basic definition of a ''migratory child.''

Current Regulations: The current regulations (contained in 34 CFR 200.40) provide definitions of several additional terms that are necessary to interpret the statutory definition of a ''migratory child.''

Proposed Regulations: Proposed § 200.81 would make no changes to these additional program definitions included in the current regulations.

Reasons: The program definitions are included in these proposed regulations solely to provide, in one place, a complete set of the regulations published for subpart C.

Section 200.82 Use of Program Funds for Unique Program Function Costs

Statute: Section 1302 of Title I provides the authority for SEAs to operate the MEP either directly or though local operating agencies. This authority means that the MEP, unlike the Title I, part A program, is a State-operated, not simply a State-administered, program and, as such, may carry out particular operational functions that are unique to the program and beyond those usually carried out by SEAs under Title I, part A.

Current Regulations: The current regulations (contained in 34 CFR 200.41) clarify that SEAs may use MEP funds to carry out ''other administrative activities,'' beyond those normally paid for by the SEA using its general Title I administrative set-aside funds. These ''other administrative activities'' are those that are unique to the MEP, including activities that are the same as, or similar to, those carried out by an LEA under Title I, part A. The current regulations provide several examples of such unique program costs.

Proposed Regulations: Proposed § 200.82 would repeat the current regulations, except that proposed § 200.82(e) has been revised to clarify that MEP funds may be used for the administrative aspects of developing the statewide needs assessment and comprehensive State plan that are required in section 1306(a) of the statute and proposed § 200.83.

Reasons: The revision to § 200.82(e) is intended to emphasize that SEAs may use MEP funds to conduct the statewide needs assessment and develop the statewide service delivery plan required under section 1306(a) of the statute and proposed § 200.83.

Section 200.83 Responsibilities of SEAs To Implement Projects Through a Comprehensive Needs Assessment and a Comprehensive State Plan for Service Delivery

Statute: Under section 1306(a) of Title I, each SEA receiving MEP funds must identify and address the special educational needs of migrant children in accordance with a comprehensive needs assessment and service delivery plan.

Proposed Regulations: Proposed § 200.83 would clarify the responsibilities of an SEA receiving MEP funds regarding development of a comprehensive needs assessment and service delivery plan. The proposed regulations would clarify that SEAs must deliver and evaluate MEP-funded services to migratory children based on a written plan that reflects the results of a current statewide needs assessment and identified performance targets. The proposed regulations would further clarify that this plan must be developed in consultation with the parents of migratory children, and that this requirement is applicable to both SEAs and their local operating agency projects.

Reasons: The provisions in proposed § 200.83 would outline to grantees the minimum requirements the Secretary believes necessary for the development of a comprehensive needs assessment and plan for service delivery required by section 1306(a) of Title I.

Section 200.84 Responsibilities of SEAs for Evaluating the Effectiveness of the MEP

Statute: Section 1304(c)(5) of Title I requires SEAs to provide an assurance that the effectiveness of the State MEP be determined, where feasible, using the same approaches and standards that will be used to assess Title I, part A.

Current Regulations: The current regulations (contained in 34 CFR 200.42) define the responsibilities of SEAs and their local projects in regard to assessing the effectiveness of their operations using the content and performance standards and, where possible, the assessments that the State has established for all children. The current regulations also note that, where it is not feasible to use the assessments the State has established for all children, *e.g.,* in short-term summer projects, the SEA and the local project still have a responsibility to use a reasonable process for assessing the effectiveness of the project.

Proposed Regulations: Proposed § 200.84 renames and simplifies the language of the regulatory requirements to clarify that SEAs have a responsibility to evaluate the MEP in terms of the performance targets established for migratory children in proposed § 200.83.

Reasons: The provisions of proposed § 200.84 simplify the regulatory language and align it with the requirements of proposed § 200.83.

Section 200.85 Responsibilities of SEAs and Operating Agencies for Improving Services to Migratory Children

Statute: Section 1304(b)(1)(D) of the new statute requires that measurable goals and outcomes be used when planning and implementing State and local MEP projects to address the needs of migratory children.

Current Regulations: The current regulations (contained in 34 CFR 200.43) explain that, while the specific school improvement requirements of section 1116 of the statute do not apply to the MEP, SEAs and their local projects are required to use assessment results to improve the design of services provided to migratory children.

Proposed Regulations: In proposed § 200.85, a minor conforming change has been made to the language of the current regulations that would clarify that it is the results of the evaluations conducted under proposed § 200.84 that are to be used to improve the design of services to migratory children.

Reasons: The minor conforming change is necessary to establish the

correct reference to the evaluations to be conducted under proposed § 200.84.

Section 200.86 Use of MEP funds in Schoolwide Projects

Statute: The new statute sets a new and higher threshold for combining MEP funds with other funds in a schoolwide program. Section 1306(b)(4) of Title I now requires that a schoolwide program that receives MEP funds must not only continue to ''address'' the identified needs of migratory children (as was required under the prior statute) but now must also ''meet'' these identified needs before it can combine the MEP funds with other funds in the schoolwide program. This new statutory requirement would be addressed in § 200.28 of the proposed subpart A regulations.

Current Regulations: The current regulations (contained in 34 CFR 200.44) note that a schoolwide program may combine MEP funds with other funds subject to meeting the requirements found in current § 200.8(c)(3)(ii)(B)(*1*).

Proposed Regulations: In proposed § 200.86, a minor conforming change would be made to clarify that the requirements for combining MEP funds are now to be found in proposed § 200.28(c)(3)(i) of the proposed subpart A regulations.

Reasons: The minor conforming change is necessary to establish the correct reference to the requirements of proposed § 200.28(c)(3)(i).

Section 200.87 Responsibilities for Participation of Children in Private Schools

Statute: Section 1304(c)(2) of Title I eliminates the reference, in the prior statute, to the applicability of section 1120 (Participation of Children in Private Schools) of Title I to the MEP. Instead, section 9501(b) of the new statute makes the private school provisions of section 9501 of the statute applicable to the MEP.

Current Regulations: The current regulations (contained in 34 CFR 200.45) note that the provisions of section 1120 regarding the participation of private school children are applicable to the MEP.

Proposed Regulations: In proposed § 200.87, a minor conforming change has been made that would clarify that the provisions regarding the participation of children in private schools contained in section 9501 of the new statute apply to the MEP.

Reasons: The minor conforming change is necessary to establish the correct reference to the requirements of section 9501 of the new statute.

Section 200.88 Exclusion of Supplemental State and Local Funds From Supplement, not Supplant and Comparability Determinations

Statute: Section 1120A(b) and (c) of the statute define the ''comparability'' and ''supplement, not supplant'' requirements that apply to Title I, part A. Subsection (d) of section 1120A provides an exception to the ''comparability'' and ''supplement, not supplant'' requirements for State and local funds that are expended for programs that meet the intent and purposes of Title I. The assurances in section 1304(c)(2) of Title I, in turn, adopt, by reference, the ''comparability'' and ''supplement, not supplant'' requirements in section 1120A.

Current Regulations: The current regulations (contained in 34 CFR 200.63) implement the exclusion from both the ''comparability'' and ''supplement, not supplant'' requirements in section 1120A(d), and, because of section 1304(c)(2), make that exclusion applicable, as a general regulatory provision, to the MEP as well as to Title I, part A. The exclusion is only for State and local funds spent for programs that meet the intent and purposes of Title I. That is, under current § 200.63(b), a State or local program is considered to meet the intent and purposes of Title I if it has basic aspects of the Title I, part A program—*e.g.,* if implemented in any schoolwide program or school that: (1) serves only children failing or at risk of failing to achieve to high standards, (2) provides supplementary educational services to meet the special educational needs of participating children, and (3) uses the State's system of assessments.

Proposed Regulations: Proposed § 200.88 would clarify that, for purposes of the MEP, only ''supplemental'' State or local funds that are used for programs specifically designed to meet the unique needs of migratory children may be excluded in terms of determining compliance with the ''comparability'' and ''supplement, not supplant'' provisions of the statute.

Reasons: In the past few years, the Department has learned of situations in which, with State approval, one or more LEAs paid the costs of their summer programs with a mixture of State compensatory education program funds and MEP funds. While these programs served both migratory and non-migratory children, they paid for a portion of services available to migrant students out of their MEP funds, excluding them from the level of services provided with the State compensatory education program funds to non-migratory children. While this arrangement is consistent with the letter of current § 200.63 as written, the Department believes that it violates the intent of section 1304(c)(2) of the statute.

The broad purpose of the section 1120A statutory exclusion is to encourage States and LEAs to use their own funds to support supplemental programs without concern for ''comparability'' and ''supplement, not supplant'' considerations. The Department believes that the requirement in section 1304(c)(2), that the MEP be implemented ''in a manner consistent with the objectives of'' the section 1120A ''comparability'' and ''supplement, not supplant'' requirements, is best interpreted, for purposes of the MEP, to exclude only State and local funds used in programs that are specifically designed, like the MEP itself, to serve migratory children. Proposed § 200.88 would serve to establish this reasonable interpretation through regulations.

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

Statute: Title I, part D of the ESEA authorizes two programs that address the needs of neglected, delinquent, and at-risk children and youth. The basic provisions of this part of the new law are the same as the old law. Subpart l of part D establishes the State agency Neglected or Delinquent (N or D) program, which provides Federal financial assistance to State agencies that operate educational programs for children and youth in institutions or community day programs for N or D children and for youth in adult correctional facilities. Subpart 2 of part D authorizes a program that provides assistance to LEAs to serve children and youths who are in locally operated correctional facilities (including institutions for delinquent children) or are at risk of dropping out of school. Funds for this program are generated by counts of children, which the Department collects annually for Title I, part A purposes, that live in locally operated institutions for delinquent children or are in locally operated correctional facilities. States award Subpart 2 funds to LEAs with high numbers or percentages of youth residing in correctional facilities or institutions for delinquent children to conduct programs that provide an array of services to meet the special needs of at-risk children and youth.

Current Regulations: The current regulations in 34 CFR 200.50 and 200.51 contain several specific program

definitions and set out requirements for SEAs to follow when providing the Department with enrollment data used to determine State agency N or D allocations.

Proposed Regulation: The proposed regulations would continue the regulations with no change in policy.

Reasons: The Department needs the proposed regulations in order to collect the annual data used for determining part D, Subpart 1 allocations, and to provide guidance and clarification about the children, who are eligible for services under part D, subpart 2.

The definitions in proposed § 200.90 would 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 actual educational programs that involve classroom instruction supported by State funds. The definitions of institutions for neglected or delinquent children and youth further require that the average length of stay in the institution be at least 30 days. This continues current policy and ensures 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.

Proposed § 200.92, which outlines the requirements for an SEA in providing the Department with enrollment data for use in determining State Agency N or D allocations, clarifies, for example, how States adjust their enrollment counts to account for the length of the school year as required by the statute.

Subpart E—General Provisions Section 200.100 Reservation of Funds for School Improvement, State Administration, and the State Academic Achievement Award Program; and § 200.103 Definitions

Statute: Section 1003 of Title I requires that an SEA reserve two percent of its funds received under Title I, part A for school improvement activities authorized in section 1116 and 1117 of the statute. The amount reserved rises to four percent beginning in 2004. Section 1004 authorizes an SEA to reserve up to the greater of one percent or $400,000 from funds it receives under Title I, part A, part C (Migrant Education program) and part D (State Agency Neglected or Delinquent program) for State administration. Section 1117(c)(2)(A) further authorizes the SEA to reserve up to five percent of the Title I, part A amount received in excess of the prior-year amount for the State academic awards program.

Current Regulations: The current regulations (contained in 34 CFR 200.60 through 200.65) outline procedures for how a State reserves funds for State administration and school improvement activities, provides guidance to an SEA on the use of funds reserved for State administration, and defines certain terms that apply to all programs covered by the regulations.

Proposed Regulations: Proposed § 200.100 would clarify new procedures an SEA must follow when reserving funds for school improvement, State administration, and the State academic achievement awards program. When reserving funds for these activities, the SEA must first reserve funds for school improvement activities authorized under sections 1116 and 1117 of the Title I statute. In reserving funds for school improvement, an SEA may not reduce the sum of the Title I, part A allocations each LEA would receive below the total amount the LEA received in the preceding year. After reserving funds for school improvement, an SEA may then reserve funds for State administration and the State academic achievement awards program. In reducing LEA allocations, the SEA has the flexibility of (1) ensuring that no LEA receives, in total, less than 85, 90, or 95 percent, as applicable, of the amount it received in the preceding year (depending on its percentage of formula children) or (2) reducing each LEA at the same rate even if that results in an LEA receiving less than its hold-harmless amount.

In addition, proposed §§ 200.100 and 200.103 would (1) address the use of funds reserved for State administration and (2) provide certain definitions that apply to all of the programs governed by the proposed regulations.

Reasons: The provisions in proposed § 200.100 work in combination with the requirements outlined in proposed §§ 200.70 through 200.75 for allocating Title I, part A funds to an LEA by establishing the procedures that an SEA follows when reserving funds for school improvement, State administration, and the State academic achievement awards program. The key issue in proposed § 200.100 is whether the Department should give an SEA the flexibility to reduce an LEA below its hold-harmless amount when reserving funds for State administration and the State academic awards program so that all LEAs would contribute proportionately to these activities.

In the past, an SEA has always followed Title I's hold-harmless provisions when reserving funds for State administration, provided there was enough money available to honor the hold-harmless requirement. However, in ensuring that no LEA receives less than its hold-harmless amount, any LEA that gained additional funds under the Title I formula had to give up all or part of its gain in order to bring any LEA falling below its hold-harmless amount up to that level. As a result, any LEA that gained funds under the formula contributed a disproportionately larger share of its Title I allocations to support these Statewide activities, while an LEA funded at its hold-harmless level contributed nothing.

In order to provide more equity in how each LEA contributes to the reserve for State administration and the State academic achievement award program, the language in proposed § 200.100(d) would give a State the option of proportionately reducing each LEA's total Title I allocation even if the outcome results in some LEAs receiving less than their hold-harmless amounts. If the SEA adopts this option, every LEA would contribute an equal proportion of its Title I allocation to these Statewide activities.

The language in proposed § 200.103 is the same as in the current regulations and would define certain terms that are used throughout the proposed regulations.

Executive Order 12866

1. Potential Costs and Benefits

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

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

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

Summary of Benefits and Costs

As noted elsewhere, most of the regulations the Secretary proposes to

issue through this notice would add clarity where the statute is ambiguous or unclear or would reorganize statutory provisions to facilitate a better understanding of their requirements. The proposed regulations would not add significantly to the costs of implementing the programs authorized by ESEA Title I or alter the benefits that the Secretary believes will be obtained through successful implementation. The vast majority of the implementation costs and benefits will stem from the underlying legislation.

The programs authorized by Title I of the Elementary and Secondary Education Act, as reauthorized by the No Child Left Behind Act of 2001, have as their goal the education of all students, including students who are economically disadvantaged, limited English proficient, disabled, migrant, residing in institutions for neglected or delinquent youth and adults, or members of other groups typically considered ''at risk,'' so that they can achieve to challenging content and academic achievement standards. Thus, the benefits that will be obtained through the reauthorized Title I and its implementing regulations are those primarily of a more educated society. National data sets and studies by prominent researchers have demonstrated repeatedly that better education has major benefits, both economic and non-economic, not only for the individuals who receive it but for society as a whole. Nations that invest in quality education enjoy higher levels of growth and productivity, and a high-quality education system is an indispensable element of a strong economy and successful civil society.

Data from the 1999 Current Population Survey, conducted by the Census Bureau, indicate that adults with a high school diploma (but no further education) had a median income of $23,061, compared to $17,015 for those with no diploma and $15,098 for those with less than 9 years of education. High school graduates are more likely to continue their education and receive the additional skills and knowledge necessary to compete for jobs in a high-technology, knowledge-driven economy. Scholars have also found strong, positive correlations between higher levels of schooling and higher lifetime earnings, higher savings rates, and reduced costs of job search.

Researchers have, in addition, found that more and better education correlates with other outcomes that, while not directly related to employment and earnings, have a major, positive benefit on society. More educated individuals lead healthier lives and have lower mortality rates. They are more likely to donate time and money to charity, and to vote in elections. Researchers have demonstrated the intergenerational impact of education, as the educational level of parents is a positive predictor of children's health, cognitive development, education, occupational status, and future earnings. In addition, education is negatively correlated with criminal activity and incarceration, and more educated mothers are less likely to have daughters who give birth out of wedlock as teens.

The reauthorized Title I programs, and the regulations that the Department is proposing for those programs, will also lead to improvements in the qualifications of teachers, both in programs supported by Title I and in schools generally. The Department believes that the new teacher qualifications provisions will also convey major benefits on students and on society generally. Research has found that the academic success of children is more dependent on teacher quality than on any other variable, with the exception of family background; it is, in other words, the most important school-related determinant of achievement.

The major costs to States and to LEAs imposed by the statute and the proposed regulations are the costs of administering the Title I programs: at the State level, distributing funds to LEAs, monitoring LEA activities, providing technical assistance, and carrying out other activities specified in the statute, and, at the local level, administering programs in schools and classrooms, providing professional development to teachers and other staff, and ensuring program accountability, among other things. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources. For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

2. Clarity of the Regulations

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

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

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, *§ 200.12 Single State accountability system*.)
- Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easy to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

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

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) has been prepared in accordance with the Regulatory Flexibility Act. It involves proposed rules under Title I of the Elementary and Secondary Education Act, as amended by the NCLB Act. Its provisions require LEAs, without regard to size, to take certain actions to improve student academic achievement.

1. Reasons for, and Objectives of, Proposed Rules

The purpose of the proposed rules is to implement recent changes to Title I of the ESEA made by the NCLB Act.

2. Legal Basis

We are proposing the rules under the authority in section 1901(a) of Title I.

3. Small Entities Subject to the Proposed Rules

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under Title I programs.

4. Reporting, Recordkeeping and Other Compliance Requirements

Among other requirements, LEAs must: (1) Publicize and disseminate the results of its annual progress review, (2)

notify parents and teachers of any school identified for improvement or subject to corrective action or restructuring, (3) publicize and disseminate information regarding any action taken by the school and LEA to address the problems that led to the identification, and (4) for schools subject to restructuring, prepare a plan to carry out alternative governance arrangements. An LEA also must maintain in its records, and provide to the SEA, a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

5. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap or conflict with the proposed rules.

6. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. We believe there are no regulatory alternatives as the portions of these regulations that would affect small entities restate statutory requirements. Moreover, activities required under these proposed regulations would be financed through the appropriations for Title I programs, and the responsibilities encompassed in the law and regulations would not impose a financial burden that small entities would have to meet from non-Federal resources.

7. Request for Comments

Little data are available that would permit a separate analysis of how the proposed changes affect small entities in particular. Therefore, the Secretary specifically invites comments on the differential effects of the proposed regulations on small entities, and whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of Title I programs. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be considered in the preparation of the final regulations and the accompanying Final Regulatory Flexibility Analysis, and will be placed in the public comment file.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications.

''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although we do not believe these proposed requirements would have federalism implications as defined in Executive Order 13132, we encourage State and local elected officials to review them and to provide comments.

Paperwork Reduction Act of 1995

Title I, part A of the Elementary and Secondary Education, as amended by the No Child Left Behind Act, contains several provisions that require State educational agencies (SEAs), Local educational agencies (LEAs), or schools to collect or disseminate information. They are: Sections 200.26, 200.27, 200.28, 200.30, 200.31, 200.34, 200.36, 200.36, 200.37, 200.38, 200.39, 200.41, 200.42, 200.43, 200.45, 200.46, 200.47, 200.49, 200.50, 200.51, 200.52, 200.57, and 200.62. Sections 200.12, 200.13, and 200.33 are covered under OMB control number 1810–0576. Section 200.53 is covered under OMB control number 1810–0516. Sections 200.70 through 200.75 are covered under OMB control numbers 1810–0620 and 1810–0622. Section 200.91 is covered under OMB control number 1810–0060.

SEAs must: (1) Provide annual notice to potential supplemental service providers of the opportunity to provide such services, and (2) maintain an updated list of approved providers from which parents may select, and (3) publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by each approved provider and for withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental services. As part of their responsibility to annually review the progress of each LEA to determine whether schools are making adequate yearly progress, SEAs must: (1) Provide, before the beginning of the next school year, the results of academic assessments administered as part of the State assessment system in a given school year to LEAs, (2) publicize and disseminate the results of the State review, (3) notify parents when LEAs are identified for improvement or corrective action, including providing information on the corrective action, and (4) notify the Secretary of Education of major factors that have significantly affected student academic achievement in schools identified for improvement. Additionally, under Title I, part D, States must submit 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 children and youth and adult correctional institutions.

As part of their responsibility to annually review the progress of schools to determine whether they are making adequate yearly progress, each LEA must (1) publicize and disseminate the results of its annual progress review, (2) notify parents and teachers of any school identified for improvement or subject to corrective action or restructuring, (3) publicize and disseminate information regarding any action taken by the school and LEA to address the problems that lead to the identification, and (4) for schools subject to restructuring, prepare a plan to carry out alternative governance arrangements. LEAs also must maintain in their records, and provide to the SEA, written affirmation signed by officials of each private school with participating children, or appropriate private school representatives, that the required consultation has occurred.

At the school level, an eligible school choosing to operate a schoolwide program must develop a comprehensive schoolwide plan and maintain records demonstrating that it addresses the intents and purpose of each Federal program included.

The total estimated burden hours for SEA activities covered by the paperwork requirements is 55,952 across 52 SEAs. The total estimated burden hours for LEA activities covered by the paperwork requirements is 959,480 hours across 13,335 LEAs. The total estimated burden hours for school-level activities is 1,410,976 hours. Almost all the burden hours at the LEA and school level result from statutory requirements that require: (1) LEAs to prepare restructuring plans for schools that do not make adequate yearly progress after one full year in corrective action, and (2) schools seeking to operate schoolwide programs to develop schoolwide program plans. The actual impact on an individual LEA or school will vary depending on whether the LEA or school is subject to these specific requirements.

§ 200.83 outlines an SEA's responsibility to implement its State Title I, part C (Migrant Education) program through a comprehensive needs assessment and a comprehensive State plan for service delivery. § 200.84 outlines an SEA's responsibility for evaluating the effectiveness of its Title I, part C (Migrant Education) program. The yearly estimated public reporting burden for the collection of information to implement these two proposed regulatory requirements is 19,405 hours.

The Office of Management and Budget is currently reviewing the information collections pertaining to this regulation. We invite comments on the paperwork sections of this proposed regulation by September 5, 2002. If you want to comment on the information collection requirements, please send your comments to Jacquelyn C. Jackson at the address listed under **ADDRESSES.**

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

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of children 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: July 30, 2002.

Rod Paige,

Secretary of Education.

The Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

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

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

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

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

2. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.10 (as revised in a final rule published in the **Federal Register** on July 5, 2002 (67 FR 45038)) to read as follows:

Participation in NAEP

2a. In subpart A to part 200, remove the undesignated center headings ''Schoolwide Programs'', ''Participation of Eligible Children in Private Schools'', ''Capital Expenses'', Procedures for the Within-State Allocation of LEA Program Funds'', and ''Procedures for the Within-District Allocation of LEA Program Funds''.

3. Revise § 200.11 and place it under the new undesignated center heading ''Participation in NAEP'' in subpart A of part 200 to read as follows:

§ 200.11 Participation in NAEP.

(a) *State participation.* Beginning in the 2002–2003 school year, each State that receives funds under subpart A of this part must participate in biennial State academic assessments of fourth and eighth grade reading and mathematics under the State National Assessment of Educational Progress (NAEP), if the Department pays the costs of administering those assessments.

(b) *Local participation.* In accordance with section 1112(b)(1)(F) of the Act, and notwithstanding section 441(d)(1) of the National Education Statistics Act, an LEA that receives funds under subpart A of this part, if selected, must participate in the State-NAEP assessments referred to in paragraph (a) of this section.

(Authority: 20 U.S.C. 6311(c)(2); 6312(b)(1)(F), 9010(d)(1))

4. Add a new undesignated center heading to subpart A of part 200 and place it after revised § 200.11 to read as follows:

State Accountability System

5. Revise § 200.12 and place it under the new undesignated center heading ''State Accountability System'' in subpart A of part 200 to read as follows:

§ 200.12 Single State accountability system.

(a)(1) Each State must demonstrate in its State plan that the State has developed and is implementing, beginning with the 2002–2003 school year, a single, statewide accountability system.

(2) The State's accountability system must be effective in ensuring that all public elementary and secondary schools and LEAs in the State make adequate yearly progress as defined in §§ 200.13 through 200.20.

(b)(1) Except as provided in paragraph (b)(2) of this section, each State must use the same accountability system for all public elementary and secondary schools and all LEAs in the State.

(2) The State may, but is not required to, subject schools and LEAs not participating under subpart A of this part to the requirements of section 1116 of the Act.

(c) The State's accountability system must—

(1) Be based on the State's academic standards under § 200.1, academic assessments under § 200.2, and other academic indicators under § 200.19;

(2) Take into account the achievement of all public elementary and secondary school students;

(3) Include sanctions and rewards that the State will use to hold public elementary and secondary schools and LEAs accountable for student achievement and for making adequate yearly progress;

(4) Establish guidelines to ensure that alternate assessments are used only when appropriate for students with disabilities who have the most significant cognitive disabilities; and

(5) Require schools and LEAs to report the percentage of students taking an alternate assessment.

(Authority: 20 U.S.C. 6311(b)(2)(A))

6. Add a new undesignated center heading to subpart A of part 200 and place it after revised § 200.12 to read as follows:

Adequate Yearly Progress

7. Revise § 200.13 and place it under the new undesignated center heading ''Adequate Yearly Progress'' in subpart A of part 200 to read as follows:

§ 200.13 Adequate yearly progress in general.

(a) Each State must demonstrate in its State plan what constitutes adequate yearly progress of the State and of all public schools and LEAs in the State—

(1) Toward enabling all public school students to meet the State's student academic achievement standards; while

(2) Working toward the goal of narrowing the achievement gaps in the State, its LEAs, and its schools.

(b) A State must define adequate yearly progress, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Except as provided in paragraph (c) of this paragraph, applies the same high standards of academic achievement to all public school students in the State;

(2) Is statistically valid and reliable;

(3) Results in continuous and substantial academic improvement for all students;

(4) Measures the progress of all public schools, LEAs, and the State—

(i) Based primarily on the State's academic assessment system under § 200.2; or

(ii) Consistent with paragraph (d) of this section;

(5) Measures progress separately for reading/language arts and for mathematics;

(6) Is the same for all public schools and LEAs in the State; and

(7) Consistent with § 200.7, applies the same intermediate goals, annual measurable objectives, and other academic indicators under §§ 200.17 through 200.19 to each of the following:

(i) All public school students.

(ii) Students in each of the following subgroups:

(A) Economically disadvantaged students.

(B) Students from major racial and ethnic groups.

(C) Students with disabilities, as defined in section 9101(5) of the Act.

(D) Students with limited English proficiency, as defined in section 9101(25) of the Act.

(c)(1) For students with the most significant cognitive disabilities who take an alternate assessment, a State may, through a documented and validated standards-setting process, define achievement standards that—

(i) Are aligned with the State's academic content standards; and

(ii) Reflect professional judgment of the highest learning standards possible for those students.

(2)(i) In calculating adequate yearly progress for schools, a State may permit the use of the achievement standards in paragraph (c)(1) of this section, provided that schools in the aggregate do not exceed the State and LEA limitations in paragraph (c)(2)(ii) of this section.

(ii) In calculating adequate yearly progress for States and LEAs, a State may not permit the use of the achievement standards in paragraph (c)(1) of this section for more than 0.5 percent of all students in the grades assessed.

(iii) For purposes of calculating adequate yearly progress for States and LEAs, the State must require that grade-level academic content and achievement standards established under § 200.1 apply to any students taking alternate assessments that exceed the number established under paragraph(c)(2)(ii) of this section.

(d)(1) The State must establish a way to hold accountable schools—

(i) In which no grade level is assessed under the State's academic assessment system; or

(ii) Whose purpose is to serve students for less than a full academic year.

(2) The State is not required to administer a formal assessment to meet the requirement in paragraph (d)(1) of this section.

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

8. Add § 200.14 and place it under the new undesignated center heading ''Adequate Yearly Progress'' in subpart A of part 200 to read as follows:

§ 200.14 Components of adequate yearly progress.

A State's definition of adequate yearly progress must include all of the following:

(a) A timeline in accordance with § 200.15.

(b) Starting points in accordance with § 200.16.

(c) Intermediate goals in accordance with § 200.17.

(d) Annual measurable objectives in accordance with § 200.18.

(e) Other academic indicators in accordance with § 200.19.

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

9. Revise §§ 200.15 through 200.17 and place them under the new undesignated center heading ''Adequate Yearly Progress'' in subpart A of part 200 to read as follows:

§ 200.15 Timeline.

(a) Each State must establish a timeline for making adequate yearly progress that ensures that, not later than the 2013–2014 school year, all students in each group described in § 200.13(b)(7) will meet or exceed the State's proficient level of academic achievement.

(b) Notwithstanding subsequent changes a State may make to its academic assessment system or its definition of adequate yearly progress under §§ 200.13 through 200.20, the State may not extend its timeline for all students to reach proficiency beyond the 2013–2014 school year.

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

§ 200.16 Starting points.

(a) Using data for the 2001–2002 school year, each State must establish starting points in reading/language arts and in mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement.

(b) Each starting point must be based, at a minimum, on the higher of the following percentages of students at the proficient level:

(1) The percentage in the State of proficient students in the lowest-achieving subgroup of students under § 200.13(b)(7)(ii).

(2) The percentage of proficient students in the school in which is enrolled the student at the 20th percentile of the State's total enrollment. The State must determine this percentage as follows:

(i) Rank each school in the State according to the percentage of proficient students in the school.

(ii) Determine 20 percent of the total enrollment in all schools in the State.

(iii) Beginning with the lowest-ranked school, add the number of students enrolled in each school until reaching the school that represents 20 percent of the total enrollment in all schools.

(iv) Identify the percent of proficient students in the school identified in paragraph (iii).

(c)(1) Except as permitted under paragraph (c)(2) of this section, each starting point must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7).

(2) A State may use the procedures under paragraph (b) of this section to establish separate starting points by grade span.

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

§ 200.17 Intermediate goals.

Each State must establish intermediate goals that increase in equal increments over the period covered by the timeline under § 200.15 as follows:

(a) The first incremental increase must take effect not later than the 2004–2005 school year.

(b) Each following incremental increase must occur within three years.

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

10. Add §§ 200.18 and 200.19 and place them under the new undesignated center heading ''Adequate Yearly Progress'' in subpart A of part 200 to read as follows:

§ 200.18 Annual measurable objectives.

(a) Each State must establish annual measurable objectives that—

(1) Identify for each year a minimum percentage of students that must meet or exceed the proficient level of academic achievement on the State's academic assessments; and

(2) Ensure that all students meet or exceed the State's proficient level of academic achievement within the timeline under § 200.15.

(b) The State's annual measurable objectives—

(1) Must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7); and

(2) May be the same for more than one year, consistent with the State's intermediate goals under § 200.17.

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

§ 200.19 Other academic indicators.

(a) Each State must include in its definition of adequate yearly progress—

(1) The graduation rate for public high schools, which means—

(i) The percentage of students who graduate from high school with a regular diploma (not including a GED) in the standard number of years; or

(ii) Another definition, developed by the State and approved by the Secretary in the State plan, that more accurately measures the high school graduation rate; and

(2) At least one academic indicator for public elementary schools and at least one academic indicator for public middle schools, such as those under paragraph (b) of this section.

(b) The State may include additional academic indicators determined by the State, including, but not limited to, the following:

(1) Additional State or locally administered assessments not included in the State assessment system under § 200.2.

(2) Grade-to-grade retention rates.

(3) Attendance rates.

(4) Percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

(c) The State may, but is not required to, increase the goals of its other academic indicators over the course of the timeline under § 200.15.

(d) In carrying out paragraphs (a) and (b) of this section, a State must ensure that the indicators are—

(1) Valid and reliable;

(2) Consistent with relevant, nationally recognized professional and technical standards, if any; and

(3) Consistent throughout the State within each grade span.

(e) Except as provided in § 200.20(b)(2), a State—

(1) May not use the indicators in paragraphs (a) and (b) of this section to reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring if those indicators were not used; but

(2) May use the indicators to identify additional schools for school improvement, corrective action, or restructuring.

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

11. Revise §§ 200.20 and 200.21 and place them under the new undesignated center heading ''Adequate Yearly Progress'' in subpart A of part 200 to read as follows:

§ 200.20 Making adequate yearly progress.

A school or LEA makes adequate yearly progress if it complies with paragraph (c) and with either paragraph (a) or (b) of this section separately in reading/language arts and in mathematics.

(a) A school or LEA makes adequate yearly progress if each group of students under § 200.13(b)(7) meets or exceeds the State's—

(1) Annual measurable objectives under § 200.18; and

(2) Other academic indicators consistent with § 200.19(e).

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes adequate yearly progress if—

(1) The percentage of students in that group below the State's proficient achievement level decreased by at least 10 percent from the preceding year; and

(2) That group made progress on one or more of the State's academic indicators under § 200.19 or the LEA's academic indicators under § 200.70(a)(2)(ii).

(c)(1) A school or LEA makes adequate yearly progress if, consistent with paragraph (e) of this section—

(i) Not less than 95 percent of the students enrolled in each group under § 200.13(b)(7) take the State assessments under § 200.2; and

(ii) The group is of sufficient size to produce statistically reliable results under § 200.7(a).

(2) If a group under § 200.13(b)(7) is not of sufficient size to produce statistically reliable results under paragraph (c)(1)(ii) of this section, the State must still include students in that group in its State assessments under § 200.2.

(d) For the purpose of determining whether a school or LEA has made adequate yearly progress, a State may establish a uniform procedure for averaging data that includes one or more of the following:

(1) *Averaging data across school years.* (i) A State may average data from the school year for which the determination is made with data from one or two school years immediately preceding that school year.

(ii) If a State averages data across school years, the State—

(A) May not delay—

(*1*) Implementing the assessments under § 200.5(a)(2) and (b);

(*2*) Determining adequate yearly progress under §§ 200.13 through 200.20 on the basis of assessments under § 200.5(a)(1);

(*3*) Reporting data resulting from the assessments under § 200.5(a)(2) and (b); or

(*4*) Implementing the requirements in section 1116 of the Act; but

(B) May delay determining adequate yearly progress on the basis of assessments under § 200.5(a)(2) until it has data from two or three years to average.

(2) *Combining data across grades.* Within each subject area, the State may combine data across grades in a school or LEA.

(e)(1) In determining the adequate yearly progress of an LEA, a State must include all students who were enrolled in schools in the LEA for a full academic year, as defined by the State.

(2) In determining the adequate yearly progress of a school, the State may not include students who were not enrolled in that school for a full academic year, as defined by the State.

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

§ 200.21 Adequate yearly progress of a State.

For each State that receives funds under subpart A of this part and under subpart 1 of part A of Title III of the Act, the Secretary must, beginning with the 2004–2005 school year, annually review whether the State has—

(a) Made adequate yearly progress as defined in §§ 200.13 through 200.20 for each group of students in § 200.13(b)(7); and

(b) Met its annual measurable achievement objectives relating to the development and attainment of English proficiency by limited English

proficient students under section 3122(a) of the Act.

(Authority: 20 U.S.C. 7325)

12. Remove and reserve §§ 200.22 through 200.24 and place them under the new undesignated center heading ''Adequate Yearly Progress'' in subpart A of part 200.

12a. Add a new undesignated center heading following §200.24 to read as follows:

Schoolwide Programs

13. Revise § 200.25 and place it under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200 to read as follows:

§ 200.25 Schoolwide program purpose and eligibility.

(a) *Purpose.* (1) The purpose of a schoolwide program is to improve academic achievement throughout a school so that all students demonstrate proficiency related to the State's academic content and student academic achievement standards, particularly those students furthest away from demonstrating proficiency.

(2) The improved achievement is to result from improving the entire educational program of the school.

(b) *Eligibility.* (1) A school may operate a schoolwide program if—

(i) The school's LEA determines that the school serves an eligible attendance area or is a participating school under section 1113 of the Act; and

(ii) For the initial year of the schoolwide program—

(A) The school serves a school attendance area in which not less than 40 percent of the children are from low-income families; or

(B) Not less than 40 percent of the children enrolled in the school are from low-income families.

(2) In determining the percentage of children from low-income families under paragraph (b)(1)(ii) of this section, the LEA may use a measure of poverty that is different from the measure or measures of poverty used by the LEA to identify and rank school attendance areas for eligibility and participation under subpart A of this part.

(c) *Participating students and services.* A school operating a schoolwide program is not required to—

(1) Identify particular children under subpart A of this part as eligible to participate in a schoolwide program; or

(2) Provide services to those children that supplement the services they would receive, as otherwise required by section 1120A(b) of the Act.

(d) *Funding.* An eligible school may consolidate and use funds or services under subpart A of this part, together with other Federal, State, and local funds that the school receives, to operate a schoolwide program in accordance with §§ 200.25 through 200.28.

(Authority: 20 U.S.C. 6314)

14. Add a new § 200.26 and place it under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200 to read as follows:

§ 200.26 Development and evaluation of program plan.

(a) *Development of plan.* (1) A school must develop for its schoolwide program a comprehensive schoolwide program plan that describes how the school will improve academic achievement so that all students demonstrate proficiency on the State's academic content and student academic achievement standards, particularly those students furthest away from demonstrating proficiency.

(2) The school's process for developing its schoolwide plan must—

(i) Reflect an understanding of the school's academic strengths and needs related to the State's academic content and student academic achievement standards;

(ii) Focus on scientifically based research that reflects best practices for improving student academic achievement;

(iii) Involve the individuals who will have responsibility for implementing the schoolwide program plan in accordance with paragraph (d)(2) of this section;

(3) Reflect a process that occurs over time; and

(4) Provide for regular evaluation of the program's effectiveness related to the State's academic content and student academic achievement standards.

(b) *Comprehensive needs assessment.* An eligible school that desires to operate a schoolwide program must first conduct a comprehensive needs assessment of the entire school that—

(1) Takes into account the needs of migratory children as defined in section 1309(2) of the Act;

(2) Is developed with the participation of individuals who will carry out the comprehensive schoolwide program plan as that plan is described in paragraph (c) of this section;

(3) Is based on information about all students in the school, including all the demographic groups of students listed in section 1111(b)(2)(C) of the Act in relation to the State academic standards described in § 200.1;

(4) Reflects current achievement data that will help the school understand the subjects and skills in which teaching and learning need to be improved; and

(5) Reflects data that will identify—

(i) Students and groups of students who are not yet achieving to the State academic content standards and the State student academic achievement standards; and

(ii) The specific academic needs of those students that are to be addressed in the schoolwide program plan.

(c) *Comprehensive schoolwide program plan.* (1) After conducting the comprehensive needs assessment described in paragraph (b) of this section, the school must develop a comprehensive plan for assisting all students to achieve proficiency in relation to the State's academic content and student academic achievement standards.

(2) The school must develop the comprehensive plan in consultation with the LEA and its school support team or other technical assistance provider under section 1117 of the Act.

(3) The comprehensive plan must—

(i) Describe how the school will carry out the implementation components described in § 200.27;

(ii) Describe how the school will use resources under this part and from other sources to carry out the implementation components described in § 200.27; and

(iii) Include a list of SEA and LEA programs and other Federal programs under § 200.28 that the school will consolidate in the schoolwide program.

(d) *Schoolwide program planning process.* (1) The school must develop the comprehensive schoolwide program plan, including the comprehensive needs assessment over a one-year period unless—

(i) The LEA, after considering the recommendations of its technical assistance providers under section 1117 of the Act, determines that less time is needed to develop and implement the schoolwide program; or

(ii) The school is operating a schoolwide program on or before January 7, 2002, in which case the school may continue to operate its program, but must amend its existing plan to reflect the provisions of §§ 200.25 through 200.28 during the first year that it receives funds under subpart A of this part.

(2) The school must develop the comprehensive plan with the involvement of parents and other members of the community to be served and individuals who will carry out the plan, including—

(i) Teachers, principals, and administrators, including administrators of programs described in other parts of Title I of the Act;

(ii) If appropriate, pupil services personnel, technical assistance providers, and other school staff; and

(iii) If the plan relates to a secondary school, students from the school.

(3) If appropriate, the school must develop the comprehensive plan in coordination with other programs including those under Reading First, Early Reading First, Even Start, the Carl D. Perkins Vocational and Technical Education Act of 1998, and the Head Start Act.

(4) The comprehensive plan must remain in effect for the duration of the school's participation under §§ 200.25 through 200.28.

(5) The school must review and revise the plan as necessary to reflect changes in the schoolwide program or changes in State academic content standards and student academic achievement standards.

(e) *Evaluation.* The school must include in the comprehensive schoolwide program plan provisions to—

(1) Evaluate the implementation and results achieved by the schoolwide program using the State's annual assessment data, other State indicators of academic achievement, and other locally determined indicators of achievement;

(2) Determine whether the schoolwide program has been effective in increasing the extent to which students are meeting the State's academic content and student academic achievement standards, particularly those students who had been furthest from achieving those standards; and

(3) Amend the plan, as necessary, based on the results of this evaluation, to ensure continuous improvement of the schoolwide program.

(Authority: 20 U.S.C. 6314)

15. Revise §§ 200.27 and 200.28 and place them under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200 to read as follows:

§ 200.27 Schoolwide program implementation components.

The schoolwide program must include the following implementation components:

(a) *Schoolwide reform strategies.* The schoolwide program must incorporate reform strategies in the overall instructional program. Those strategies must—

(1) Address the needs of all children in the school, particularly the needs of students furthest away from demonstrating proficiency related to the State's academic content and student academic achievement standards; and

(2) Reflect effective methods and instructional practices that are based on scientifically based research, as defined in section 9101 of the Act, and that—

(i) Improve the teaching of reading/language arts, mathematics, and, at least by the 2005–2006 school year, science, consistent with the State's academic content and student academic achievement standards throughout the school;

(ii) Strengthen the core academic program; and

(iii) Increase the amount and quality of learning time.

(b) *Instruction by highly qualified teachers.* A schoolwide program must ensure instruction by highly qualified teachers and ongoing professional development by—

(1) Including strategies to ensure instruction in the schoolwide program by highly qualified teachers, as defined in § 200.56;

(2)(i) Providing high-quality and ongoing professional development in accordance with sections 1119 and 9101 of the Act for teachers, principals, paraprofessionals and, if appropriate, pupil services personnel, parents, and other staff; and

(ii) Aligning professional development with the State's academic content and student academic achievement standards;

(3) Devoting sufficient resources to carry out effectively the professional development activities described in paragraph (b)(2) of this section; and

(4) Including teachers in professional development activities regarding the use of academic assessments described in § 200.2 and, thus, to enable them to provide information on, and to improve, the achievement of individual students and the overall instructional program.

(c) *Parental involvement.* (1) A schoolwide program must involve parents in the planning, review, and improvement of the comprehensive schoolwide program plan.

(2) A schoolwide program must have a parental involvement policy that—

(i) Includes strategies to increase parental involvement in accordance with sections 1118 and 9101 of the Act, such as family literacy services;

(ii) Describes how the school will provide individual student academic assessment results, including an interpretation of those results, to the parents of students who participate in the academic assessments required by § 200.1;

(iii) Makes the comprehensive schoolwide program plan available to the LEA, parents, and the public; and

(iv) Provides the information contained in the comprehensive schoolwide program plan in an understandable and uniform format and, to the extent practicable, in a language that the parents can understand.

(d) *Additional support.* A schoolwide program must improve the entire educational program of a school, particularly with respect to those students who are furthest away from demonstrating proficiency in attaining the State's academic content and academic achievement standards. The schoolwide program must—

(1) Include activities to ensure that students who experience difficulty attaining the proficient or advanced levels of academic achievement standards required by § 200.1 will be provided with effective, timely additional support;

(2) Ensure that those students' difficulties are identified on a timely basis; and

(3) Provide sufficient information to teachers on which to base effective assistance to those students.

(e) *Transition.* A schoolwide program in an elementary school must include plans for assisting preschool students in the successful transition from early childhood programs, such as Head Start, Even Start, Early Reading First, or a preschool program under Individuals with Disabilities Act or a State-run preschool program, to the schoolwide program.

(Authority: 20 U.S.C. 6314)

§ 200.28 Use of funds in a schoolwide program.

(a) *Supplemental funds.* A school operating a schoolwide program must use funds available to carry out §§ 200.25 through 200.28 only to supplement funds that would, in the absence of funds under subpart A of this part, be made available from non-Federal sources for the school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency.

(b) *Prekindergarten Program.* A school that is eligible for a schoolwide program under § 200.1 may use funds made available under subpart A of this part to establish or enhance prekindergarten programs for children below the age of 6, such as Even Start programs or Early Reading First programs.

(c) *Availability of other Federal funds.* (1) In addition to funds under subpart A of this part, a school may use for its schoolwide program Federal funds of any program administered by the Secretary that is included in the most recent notice published for this purpose in the **Federal Register**.

(2) For the purposes of §§ 200.25 through 200.28, the authority of the school to consolidate funds from other Federal programs also applies to the consolidation of services provided to the school with those funds.

(3) If a school consolidates and uses funds from other programs in its schoolwide program, the school must meet the following requirements:

(i) *Migrant education.* Before the school chooses to consolidate in its schoolwide program funds received under part C of Title I of the Act, the school must—

(A) Use these funds first to meet the identified unique educational needs of migratory students that result from the effects of their migratory lifestyle, and to permit these students to participate effectively in school; and

(B) Document that these needs have been met.

(ii) *Indian education.* The school may consolidate funds received under subpart 1 of part A of Title VII of the Act if the parent committee established by the LEA under section 7114(c)(4) of the Act approves the inclusion of these funds.

(iii) *Special education.* (A) The school may consolidate funds received under part B of the Individuals with Disabilities Education Act (IDEA).

(B) However, the amount of funds consolidated may not exceed the amount received by the LEA under part B of IDEA for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the schoolwide program.

(C) The school may also consolidate funds received under section 8003(d) of the Act (Impact Aid) for children with disabilities in a schoolwide program.

(D) A school that consolidates funds under part B of IDEA or section 8003(d) of the Act may use those funds for any activities under its schoolwide program plan but must comply with all other requirements of part B of IDEA, to the same extent it would if it did not consolidate funds under part B of IDEA or section 8003(d) of the Act in the schoolwide program.

(4)(i) Except as provided in paragraph (c)(4)(ii) of this section, a school that consolidates and uses in a schoolwide program funds from different Federal programs administered by the Secretary—

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

(B) Is not required to maintain separate fiscal accounting records, by program, that identify the specific activities supported by those particular funds;

(C) Is required to maintain records that demonstrate that the schoolwide program, as a whole, addresses the intent and purposes of each of the Federal programs whose funds were consolidated to support the schoolwide program; and

(D) Is required to ensure that the needs of the intended beneficiaries of those other programs are addressed.

(ii) A school that chooses to use funds from other Federal programs must meet the requirements of those other programs relating to—

(A) Health;

(B) Safety;

(C) Civil rights;

(D) Student and parental participation and involvement;

(E) Services to private school children;

(F) Maintenance of effort;

(G) Comparability of services;

(H) Use of Federal funds to supplement, not supplant non-Federal funds in accordance with paragraph (a) of this section; and

(I) Distribution of funds to SEAs or LEAs.

(Authority: 20 U.S.C. 6314, 1413(a)(s)(D), 6396(b), 7703(d), 7815(c))

16. Place reserved § 200.29 under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200.

17. Add a new undesignated center heading to subpart A of part 200 and place it after reserved § 200.29 to read as follows:

LEA and School Improvement

18. Transfer §§200.30 through 200.69 to subpart A of part 200.

19. Revise § 200.30 and place it under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.30 Local review.

(a) Each LEA receiving funds under subpart A of this part must use the results of the State assessment system described in § 200.2 to review annually the progress of each school served under subpart A of this part to determine whether the school is making adequate yearly progress in accordance with § 200.20.

(b)(1) In reviewing the progress of an elementary or secondary school operating a targeted assistance program, an LEA may choose to review the progress of only the students in the school who are served, or are eligible for services, under subpart A of this part.

(2) The LEA may exercise the option under paragraph (b)(1) of this section so long as the students selected for services under the targeted assistance program are those with the greatest need for academic assistance, consistent with the requirements of section 1115 of the Act.

(c)(1) To determine whether schools served under subpart A of this part are making adequate yearly progress, an LEA also may use any additional academic assessments or any other academic indicators described in the LEA's plan.

(2) These indicators—

(i) May identify additional schools for school improvement or in need of corrective action or restructuring;

(ii) May permit a school to make adequate yearly progress if, in accordance with § 200.20(b), the school also reduces the percentage of a student group failing to meet the State's proficient level of academic achievement by at least 10 percent; and

(iii) With the exception described in paragraph (ii), may not be used to reduce the number of or change the schools that would otherwise be identified for school improvement, corrective action, or restructuring if the LEA did not use these additional indicators.

(d) The LEA must publicize and disseminate the results of its annual progress review to parents, teachers, principals, schools, and the community.

(e) The LEA must review the effectiveness of actions and activities that schools are carrying out under subpart A of this part with respect to parental involvement, professional development, and other activities assisted under subpart A of this part.

(Authority: 20 U.S.C. 6316(a) and (b))

20. Add new §§ 200.31 through 200.39 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.31 Opportunity to review school-level data.

(a) Before identifying a school for school improvement, corrective action, or restructuring, an LEA must provide the school with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based.

(b)(1) If the principal of a school that an LEA proposes to identify for school improvement, corrective action, or restructuring believes, or a majority of the parents of the students enrolled in the school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal

may provide supporting evidence to the LEA.

(2) The LEA must consider the evidence referred to in paragraph (b)(1) of this section before making a final determination.

(c) The LEA must make public a final determination of the status of the school with respect to identification not later than 30 days after it provides the school with the opportunity to review the data on which the proposed identification is based.

(Authority: 20 U.S.C. 6316(b)(2))

§ 200.32 Identification for school improvement.

(a)(1) An LEA must identify for school improvement any elementary or secondary school served under subpart A of this part that fails, for two consecutive years, to make adequate yearly progress as defined under §§ 200.13 through 200.20.

(2) The LEA must make the identification described in paragraph (a)(1) of this section before the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make adequate yearly progress for a second consecutive year.

(b)(1) An LEA must treat any school that was in the first year of school improvement status on January 7, 2002 as a school that is in the first year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must, in accordance with § 200.44, provide public school choice to all students in the school.

(c)(1) An LEA must treat any school that was identified for school improvement for two or more consecutive years on January 7, 2002 as a school that is in its second year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must—

(i) In accordance with § 200.44, provide public school choice to all students in the school; and

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school.

(d) An LEA may remove from improvement status a school otherwise subject to the requirements of paragraphs (b) or (c) of this section if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school makes adequate yearly progress for a second consecutive year.

(e) An LEA may, but is not required to, identify a school for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school fails to make adequate yearly progress for a second consecutive year.

(f) If an LEA identifies a school for improvement after the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make adequate yearly progress for a second consecutive year—

(1) The school is subject to the requirements of school improvement under § 200.39 immediately upon identification, including the provision of public school choice; and

(2) The LEA must count that school year as a full school year for the purposes of subjecting the school to additional improvement measures if the school continues to fail to make adequate yearly progress.

(Authority: 20 U.S.C. 6316)

§ 200.33 Identification for corrective action.

(a) If a school served by an LEA under subpart A of this part fails to make adequate yearly progress by the end of the second full year after the LEA has identified the school for improvement under § 200.32, the LEA must identify the school for corrective action under § 200.42.

(b) If a school was subject to corrective action on January 7, 2002, the LEA must—

(1) Treat the school as a school identified for corrective action under § 200.42 for the 2002–2003 school year; and

(2) Not later than the first day of the 2002–2003 school year—

(i) In accordance with § 200.44, provide public school choice to all students in the school; and

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school.

(c) An LEA may remove from corrective action a school otherwise subject to the requirements of paragraphs (a) or (b) of this section if, on the basis of assessments administered by the LEA during the 2001–2002 school year, the school makes adequate yearly progress for a second consecutive year.

(Authority: 20 U.S.C. 6316)

§ 200.34 Identification for restructuring.

(a) If a school continues to fail to make adequate yearly progress after one full school year of corrective action under § 200.42, the LEA must prepare a restructuring plan for the school and make arrangements to implement the plan.

(b) If the school continues to fail to make adequate yearly progress, the LEA must implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (a) of this section.

(Authority: 20 U.S.C. 6316(b)(8))

§ 200.35 Delay and removal.

(a) An LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, under corrective action, or under restructuring if—

(1) The school makes adequate yearly progress for one year; or

(2) The school's failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school.

(b)(1) The LEA may not take into account a period of delay under paragraph (a) of this section in determining the number of consecutive years of the school's failure to make adequate yearly progress.

(2) Except as provided in paragraph (c) of this section, the LEA must subject the school to further actions as if the delay never occurred.

(c) If any school identified for school improvement, corrective action, or restructuring makes adequate yearly progress for two consecutive school years, the LEA may not, for the succeeding school year—

(1) Subject the school to the requirements of school improvement, corrective action, or restructuring; or

(2) Identify the school for improvement.

(Authority: 20 U.S.C. 6316(b))

§ 200.36 Communication with parents.

(a) Throughout the school improvement process, the State, LEA, and school must communicate with the parents of each child attending the school.

(b) The State, LEA, and school must ensure that, regardless of the method or media used, it provides information to parents—

(1) In an understandable and uniform format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

(c) The State, LEA, and school must provide information to parents—

(1) Directly, through such means as regular mail or, if possible, e-mail; and

(2) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.

(d) All communications must respect the privacy of students and their families.

(Authority: 20 U.S.C. 6316)

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

(a) If an LEA identifies a school for improvement or subjects the school to corrective action or restructuring, the LEA must promptly notify the parent or parents of each child enrolled in the school of this identification.

(b) The notice referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary and secondary schools served by the LEA and the SEA involved.

(2) The reasons for the identification.

(3) An explanation of how parents can become involved in addressing the academic issues that led to identification.

(4)(i) An explanation of the parents' option to transfer their child to another public school, in accordance with § 200.44.

(ii) The explanation of the parents' option to transfer must include, at a minimum, information on the performance of the school or schools to which the child may transfer.

(iii) The explanation may include other information on the school or schools to which the child may transfer, such as—

(A) A description of any special academic programs or facilities;

(B) The availability of before– and after-school programs; and

(C) The professional qualifications of teachers in the core academic subjects.

(5)(i) If the school is in its second year of improvement or subject to corrective action or restructuring, a notice explaining how parents can obtain supplemental educational services for their child in accordance with § 200.45.

(ii) The annual notice of the availability of supplemental educational services must include, at a minimum, the following:

(A) The identity of approved providers of those services available within the LEA, including providers of technology-based or distance-learning supplemental educational services, or providers that make services reasonably available in neighboring LEAs.

(B) A brief description of the services, qualifications, and demonstrated effectiveness of the providers referred to in paragraph (b)(5)(ii)(A) of this section.

(Authority: 20 U.S.C. 6316)

§ 200.38 Information about action taken.

(a) An LEA must publish and disseminate to parents and the public information regarding any action taken by a school and the LEA to address the problems that led to the LEA's identification of the school for improvement, corrective action, or restructuring.

(b) The information referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the school is doing to address the problem of low achievement.

(2) An explanation of what the LEA or SEA is doing to help the school address the problem of low achievement.

(3) If applicable, a description of specific corrective actions or restructuring plans, including opportunities for parental participation.

(Authority: 20 U.S.C. 6316(b))

§ 200.39 Responsibilities resulting from identification for school improvement.

(a) If an LEA identifies a school for school improvement under § 200.32—

(1) The LEA must—

(i) Not later than the first day of the school year following identification, with the exception described in § 200.32(f), provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA; and

(ii) Ensure that the school receives technical assistance in accordance with § 200.40; and

(2) The school must develop or revise a school improvement plan in accordance with § 200.41.

(b) If a school fails to make adequate yearly progress by the end of the first full school year after the LEA has identified it for improvement under § 200.32, the LEA must—

(1) Continue to provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA;

(2) Continue to ensure that the school receives technical assistance in accordance with § 200.40; and

(3) Make available supplemental educational services in accordance with § 200.45.

(Authority: 20 U.S.C. 6316(b))

21. Revise §§ 200.40 through 200.45 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.40 Technical assistance.

(a) An LEA that identifies a school for improvement under § 200.32 must ensure that the school receives technical assistance as the school develops and implements its improvement plan under § 200.41 and throughout the plan's duration.

(b) The LEA may arrange for the technical assistance to be provided by one or more of the following:

(1) The LEA through the statewide system of school support and recognition described under section 1117 of the Act.

(2) The SEA.

(3) An institution of higher education that is in full compliance with all the reporting provisions of Title II of the Higher Education Act of 1965.

(4) A private not-for-profit organization, a private for-profit organization, an educational service agency, or another entity with experience in helping schools improve academic achievement.

(c) The technical assistance must include the following:

(1) Assistance in analyzing data from the State assessment system, and other examples of student work, to—

(i) Identify and address problems in instruction and problems in implementing requirements for parental involvement and professional development under subpart A of this part; and

(ii) Identify the responsibilities of the school and LEA in developing solutions to these problems.

(2) Assistance in identifying and implementing professional development and instructional strategies and methods that have been proven effective, through scientifically based research, in addressing the specific instructional issues that caused the LEA to identify the school for improvement.

(3) Assistance in analyzing and revising the school's budget so that the school allocates its resources more effectively to the activities most likely to—

(i) Increase student academic achievement; and

(ii) Remove the school from school improvement status.

(Authority: 20 U.S.C. 6316(b)(4))

§ 200.41 School improvement plan.

(a)(1) Not later than three months after an LEA has identified a school for

improvement under § 200.32, the school must develop or revise a school improvement plan for approval by the LEA.

(2) The school must consult with parents, school staff, the LEA, and outside experts in developing or revising its school improvement plan.

(b) The school improvement plan must cover a 2-year period.

(c) The school improvement plan must—

(1) Specify the responsibilities of the school, the LEA, and the SEA serving the school under the plan, including the technical assistance to be provided by the LEA under § 200.40;

(2)(i) Incorporate strategies, drawn from scientifically based research, that will strengthen instruction in the core academic subjects at the school and address the specific academic issues that caused the LEA to identify the school for improvement; and

(ii) May include a strategy for implementating of a comprehensive school reform model described in section 1606 of the Act;

(3) With regard to the school's core academic subjects, adopt policies and practices most likely to ensure that all groups of students described in § 200.13(b)(7) and enrolled in the school will meet the State's proficient level of achievement, as measured by the State's assessment system, not later than the 2013–2014 school year;

(4) Establish measurable goals that—

(i) Address the specific reasons for the school's failure to make adequate progress; and

(ii) Promote, for each group of students described in § 200.13(b)(7) and enrolled in the school, continuous and substantial progress that ensures that all these groups meet the State's annual measurable objectives described in § 200.18;

(5) Provide an assurance that the school will spend not less than 10 percent of the allocation it received under subpart A of this part for each year that the school is in school improvement status, for the purpose of providing high-quality professional development to the school's teachers, principal, and, as appropriate, other instructional staff, consistent with section 9101(34) of the Act, that will contribute to removing the school from school improvement status and that—

(i) Directly addresses the academic achievement problem that caused the school to be identified for improvement; and

(ii) Is provided in a manner that affords increased opportunity for participating in that professional development;

(6) Incorporates a teacher mentoring program;

(7) Includes strategies to promote effective parental involvement at the school; and

(8) As appropriate, incorporates activities before school, after school, during the summer, and during any extension of the school year.

(d)(1) Within 45 days of receiving a school improvement plan, the LEA must—

(i) Establish a peer-review process to assist with review of the plan;

(ii) Promptly review the plan;

(iii) Work with the school to make any necessary revisions; and

(iv) Approve the plan if it meets the requirements of this section.

(2) The LEA may condition approval of the school improvement plan on—

(i) Inclusion of one or more of the corrective actions specified in § 200.42; or

(ii) Feedback on the plan from parents and community leaders.

(e) A school must implement its school improvement plan immediately on approval of the plan by the LEA.

(Authority: 20 U.S.C. 6316(b)(3))

§ 200.42 Corrective action.

(a) *Definition.* ''Corrective action'' means action by an LEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure of a school that led the LEA to identify the school for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the school;

(2) Is designed to increase substantially the likelihood that each group of students described in § 200.13(b)(7) and enrolled in the school will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Requirements.* If an LEA identifies a school for corrective action, in accordance with § 200.33, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Continue to ensure that the school receives technical assistance consistent with the requirements of § 200.40.

(3) Make available supplemental educational services in accordance with § 200.45.

(4) Take at least one of the following corrective actions:

(i) Replace the school staff who are relevant to the school's failure to make adequate yearly progress.

(ii) Institute and fully implement a new curriculum, including the provision of appropriate professional development for all relevant staff, that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students and of enabling the school to make adequate yearly progress.

(iii) Significantly decrease management authority at the school level.

(iv) Appoint one or more outside experts to advise the school on—

(A) Revising the school improvement plan developed under § 200.41 to address the specific issues underlying the school's continued failure to make adequate yearly progress and resulting in identification for corrective action; and

(B) Implementing the revised improvement plan.

(v) Extend for that school the length of the school year or school day.

(vi) Restructure the internal organization of the school.

(Authority: 20 U.S.C. 6316(b)(7))

§ 200.43 Restructuring.

(a) *Definition.* ''Restructuring'' means a major reorganization of a school's governance arrangement by an LEA that—

(1) Makes fundamental reforms, such as significant changes in the school's staffing and governance, to improve student academic achievement in the school;

(2) Has substantial promise of enabling the school to make adequate yearly progress as defined under §§ 200.13 through 200.20; and

(3) Is consistent with State law.

(b) *Requirements.* If the LEA identifies a school for restructuring in accordance with § 200.34, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Make available supplemental educational services in accordance with § 200.45.

(3) Prepare a plan to carry out one of the following alternative governance arrangements:

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

(ii) Replace all or most of the school staff, which may include the principal, who are relevant to the school's failure to make adequate yearly progress.

(iii) Enter into a contract with an entity, such as a private management

company, with a demonstrated record of effectiveness, to operate the school as a public school.

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

(v) Any other major restructuring of a school's governance arrangement consistent with this section.

(4) Provide to parents and teachers—

(i) Prompt notice that the LEA has identified the school for restructuring; and

(ii) An opportunity for parents and teachers to—

(A) Comment before the LEA takes any action under a restructuring plan; and

(B) Participate in the development of any restructuring plan.

(c) *Implementation.* If a school continues to fail to make adequate yearly progress, the LEA must implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (b)(3) of this section.

(d) *Rural schools.* On request, the Secretary will provide technical assistance for developing and carrying out a restructuring plan to any rural LEA—

(1) That has fewer than 600 students in average daily attendance at all of its schools; and

(2) In which all of the schools have a School Locale Code of 7 or 8, as determined by the National Center for Education Statistics.

(Authority: 20 U.S.C. 6316(b)(8))

§ 200.44 Public school choice.

(a) *Requirements.* (1) In the case of a school identified for school improvement under § 200.32, for corrective action under § 200.33, or for restructuring under § 200.34, the LEA must provide all students enrolled in the school with the option to transfer to another public school served by the LEA.

(2) The LEA must offer this option not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring.

(3) The schools to which students may transfer under paragraph (a)(1) of this section—

(i) May not include schools that—

(A) The LEA has identified for improvement, corrective action, or restructuring; or

(B) Are persistently dangerous as determined by the State; and

(ii) May include one or more public charter schools.

(4) If more than one school meets the requirements of paragraph (a)(3) of this section, the LEA must—

(i) Provide to parents of students eligible to transfer under paragraph (a)(1) of this section a choice of more than one such school; and

(ii) Take into account the parents' preferences among the choices offered under paragraph (a)(4)(i) of this section.

(5) The LEA must offer the option to transfer described in this section unless it is prohibited by State law in accordance with paragraph (b) of this section.

(6) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action before January 8, 2002, the State must ensure that the LEA provides a public school choice option in accordance with paragraph (a)(1) of this section not later than the first day of the 2002–2003 school year.

(b) *Limitation on State law prohibition.* An LEA may invoke the State law prohibition on choice described in paragraph (a)(4) of this section only if the State law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school.

(c) *Desegregation plans.* (1) If an LEA is subject to a desegregation plan, whether that plan is voluntary, court-ordered, or required by a Federal or State administrative agency, the LEA is not exempt from the requirement in paragraph (a)(1) of this section.

(2) In determining how to provide students with the option to transfer to another school, the LEA may take into account the requirements of the desegregation plan.

(3) If the desegregation plan forbids the LEA from offering the transfer option required under paragraph (a)(1) of this section, the LEA must secure appropriate changes to the plan to permit compliance with paragraph (a)(1) of this section.

(d) *Priority.* (1) In providing students the option to transfer to another public school in accordance with paragraph (a)(1) of this section, the LEA must give priority to the lowest-achieving children from low-income families.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(e) *Status.* Any public school to which a student transfers under paragraph (a)(1) of this section must ensure that the student is enrolled in classes and other activities in the school in the same manner as all other students in the school.

(f) *Duration of transfer.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must permit the student to remain in that school until the student has completed the highest grade in the school.

(2) The LEA's obligation to provide transportation for the student may be limited under the circumstances described in paragraph (h) of this section and in § 200.48.

(g) *No eligible schools within an LEA.* If all public schools to which a student may transfer within an LEA are identified for school improvement, corrective action, or restructuring, the LEA—

(1) Must, to the extent practicable, establish a cooperative agreement for a transfer with one or more other LEAs in the area; and

(2) May offer supplemental educational services to eligible students under § 200.45 in schools in their first year of school improvement under § 200.39.

(h) *Transportation.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must, consistent with § 200.48, provide or pay for the student's transportation to the school.

(2) The LEA's obligation to provide transportation for the student ends at the end of the school year in which the school from which the student transferred is no longer identified by the LEA for school improvement, corrective action, or restructuring.

(i) *Students with disabilities and students covered under section 504 of the Rehabilitation Act of 1973 (Section 504).* For students with disabilities under the IDEA and students covered under Section 504, the public school choice option must provide a free appropriate public education as that term is defined in section 602(8) of the IDEA or 34 CFR 104.33, respectively.

(Authority: 20 U.S.C. 6316)

§ 200.45 Supplemental educational services.

(a) *Definition.* ''Supplemental educational services'' means tutoring and other supplemental academic enrichment services that are—

(1) In addition to instruction provided during the school day;

(2) Specifically designed to—

(i) Increase the academic achievement of eligible students as measured by the State's assessment system; and

(ii) Enable these children to attain proficiency in meeting State academic achievement standards; and

(3) Of high quality and research-based.

(b) *Requirement.* (1) If an LEA identifies a school for improvement under § 200.39(b), corrective action under § 200.33, or restructuring under § 200.34, the LEA must arrange, consistent with paragraph (d) of this section, for each eligible student in the school to receive supplemental educational services from a State-approved provider selected by the student's parents.

(2) Except as described in §§ 200.32(d) and 200.33(c), if the school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the State must ensure that the LEA makes available, consistent with paragraph (d) of this section, supplemental educational services to all eligible students not later than the first day of the 2002–2003 school year.

(3) The LEA must, consistent with § 200.48, continue to make available supplemental educational services to eligible students until the end of the school year in which the LEA is making those services available.

(4)(i) At the request of an LEA, the SEA may waive, in whole or in part, the requirement that the LEA make available supplemental educational services if the SEA determines that—

(A) None of the providers of those services on the list approved by the SEA under § 200.47 makes those services available in the area served by the LEA or within a reasonable distance of that area; and

(B) The LEA provides evidence that it is not otherwise able to make those services available.

(ii) The SEA must notify the LEA, within 30 days of receiving the LEA's request for a waiver under paragraph (b)(4)(i) of this section, whether it approves or disapproves the request, and if it disapproves, the reasons for the disapproval, in writing.

(iii) An LEA that receives a waiver must renew its request for that waiver on an annual basis.

(c) *Eligibility.* (1) Only students from low-income families are eligible for supplemental educational services.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(d) *Priority.* If the amount of funds available for supplemental educational services is insufficient to provide services to each student whose parents request these services, the LEA must give priority to the lowest-achieving students.

(Authority: 20 U.S.C. 6316)

22. Add new §§ 200.46 through 200.49 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.46 LEA responsibilities for supplemental educational services.

(a) If an LEA is required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the LEA must do the following:

(1) Provide the notice to parents described in § 200.37(b)(5).

(2) If requested, assist parents in choosing a provider from the list of approved providers maintained by the SEA.

(3) Apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all eligible students whose parents request services.

(4) Ensure that eligible students with disabilities and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(5) Not disclose to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(b)(1) In addition to meeting the requirements in paragraph (a) of this section, the LEA must enter into an agreement with each provider selected by a parent or parents.

(2) The agreement must—

(i) Require the LEA to develop, in consultation with the parents and the provider—

(A) A statement of specific achievement goals for the student;

(B) A description of how the student's progress will be measured; and

(C) A timetable for improving achievement that, in the case of a student with disabilities under IDEA or a student covered under Section 504, is consistent with the student's individualized education program under section 614(d) of the IDEA or the student's individualized services under Section 504;

(ii) Describe procedures for regularly informing the student's parents and teachers of the student's progress;

(iii) Provide for the termination of the agreement if the provider is unable to meet the goals and timetables specified in the agreement;

(iv) Specify how the LEA will pay the provider; and

(v) Prohibit the provider from disclosing to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(3) The LEA may not pay the provider for religious worship or instruction.

(c) If State law prohibits an SEA from carrying out one or more of its responsibilities under § 200.47 with respect to those who provide, or seek approval to provide, supplemental educational services, each LEA must carry out those responsibilities with respect to its students who are eligible for those services.

(Authority: 20 U.S.C. 6316(e))

§ 200.47 SEA responsibilities for supplemental educational services.

(a) If one or more LEAs in a State are required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the SEA for that State must do the following:

(1)(i) In consultation with affected LEAs, parents, teachers, and other interested members of the public, promote participation by as many providers as possible.

(ii) This promotion must include annual notice to potential providers of—

(A) The opportunity to provide supplemental educational services; and

(B) Procedures for obtaining the SEA's approval to be a provider of those services.

(2) Consistent with paragraph (b) of this section, develop and apply to potential providers objective criteria that are based on a demonstrated record of effectiveness in increasing the academic proficiency of students in subjects relevant to meeting the State academic content standards and the State student achievement standards described under § 200.1;

(3) Maintain by LEA an updated list of approved providers from which parents may select.

(4) Develop, implement, and publicly report on standards and techniques for—

(i) Monitoring the quality and effectiveness of the services offered by each approved provider; and

(ii) Withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental educational services from that provider.

(5) Ensure that eligible students with disabilities and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(b) *Standards for approving providers.* (1) As used in this section and in

§ 200.46, ''provider'' means a non-profit entity, a for-profit entity, an LEA, a public school, including a public charter school, or a private school that——

(i) Has a demonstrated record of effectiveness in increasing student academic achievement;

(ii) Is capable of providing supplemental educational services that are consistent with the instructional program of the LEA and with the State academic content standards and State student achievement standards described under § 200.1;

(iii) Is financially sound; and

(iv) In the case of a public school, has not been identified under §§ 200.32, 200.33, or 200.34.

(2) In order for the SEA to include a provider on the State list, the provider must agree to—

(i)(A) Provide parents of each student receiving supplemental educational services and the responsible LEA with information on the progress of the student in increasing achievement.

(B) This information must be in an understandable and uniform format, including alternative formats upon request, and, to the extent practicable, in a language that the parents can understand;

(ii) Ensure that the instruction the provider gives and the content the provider uses—

(A) Are consistent with the instruction provided and the content used by the LEA and the SEA;

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

(C) Are secular, neutral, and nonideological; and

(iii) Meet all applicable Federal, State, and local health, safety, and civil rights laws.

(3) A private provider may not, on the basis of disability, exclude a qualified student with disabilities or a student covered under Section 504 if the student can, with minor adjustments, be provided supplemental educational services designed to meet the individual educational needs of the student unless otherwise provided by law.

(4) As a condition of approval, a State may not require a provider to——

(i) Hire only staff who meet the requirements under §§ 200.55 and 200.56; or

(ii) Document that its instructional strategies include scientifically based research, as that term is defined in section 9101(37) of the Act.

(Authority: 20 U.S.C. 6316(e))

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

(a) *Amounts required.* (1) To pay for choice-related transportation and supplemental educational services required under section 1116 of the Act, an LEA may use—

(i) Funds allocated under subpart A of this part;

(ii) Funds, where authorized, from other Federal education programs; and

(iii) State, local, or private resources.

(2) Unless a lesser amount is needed, the LEA must spend an amount equal to 20 percent of its allocation under subpart A of this part to——

(i) Provide, or pay for, transportation of students exercising a choice option under § 200.44;

(ii) Satisfy all requests for supplemental educational services under § 200.45; or

(iii) Pay for both paragraph (a)(2)(i) and (ii) of this section, except that——

(A) If the cost of satisfying all requests for supplemental educational services under § 200.45 exceeds an amount equal to 5 percent of the LEA's allocation under subpart A of this part, the LEA may not spend less than this amount for supplemental educational services; and

(B) The LEA may not include costs for transportation or administration in meeting this 5 percent requirement

(3) If the amount specified in paragraph (a)(2) of this section is insufficient to pay all choice-related transportation costs, the LEA may, but is not required to, make available any additional needed funds from Federal, State, or local sources.

(4) To assist an LEA that does not have sufficient funds to make available supplemental educational services to all students requesting these services, an SEA may use funds that it reserves under part A of Title I and part A of Title V.

(b) *Cap on school-level reduction.* (1) An LEA may not, in applying paragraph (a) of this section, reduce by more than 15 percent the total amount it makes available under subpart A of this part to a school it has identified for corrective action or restructuring.

(c) *Per-child funding for supplemental educational services.* For each student receiving supplemental educational services under § 200.45, the LEA must make available the lesser of——

(1) The amount of its allocation under subpart A of this part, divided by the number of students from families below the poverty level, as counted under section 1124(c)(1)(A) of the Act; or

(2) The actual costs of the supplemental educational services received by the student.

(Authority: 20 U.S.C. 6316)

§ 200.49 SEA responsibilities for school improvement, corrective action, and restructuring.

(a) *Transition requirements for public school choice and supplemental educational services.* (1) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school provides public school choice in accordance with § 200.44 not later than the first day of the 2002–2003 school year.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school makes available supplemental educational services in accordance with § 200.45 not later than the first day of the 2002–2003 school year.

(b) *State reservation of funds for school improvement.* (1) In accordance with § 200.100(a), an SEA must reserve two percent of the amount it receives under subpart A of this part for fiscal years 2002 and 2003, and four percent of the amount it receives under subpart A of this part for fiscal years 2004 through 2007, to——

(i) Support local school improvement activities;

(ii) Provide technical assistance to schools identified for improvement, corrective action, or restructuring; and

(iii) Provide technical assistance to LEAs that the SEA has identified for improvement or corrective action in accordance with § 200.50.

(2) Of the amount it reserves under paragraph (a)(1) of this section, the SEA must—

(i) Allocate not less than 95 percent directly to LEAs serving schools identified for improvement, corrective action, and restructuring to support improvement activities; or

(ii) If requested by an LEA, directly provide for these improvement activities or arrange to provide them through such entities as school support teams or educational service agencies.

(3) In providing assistance to LEAs under paragraph (b)(2) of this section, the SEA must give priority to LEAs that—

(i) Serve the lowest-achieving schools;

(ii) Demonstrate the greatest need for this assistance; and

(iii) Demonstrate the strongest commitment to ensuring that this assistance will be used to enable the lowest-achieving schools to meet the progress goals in the school improvement plans under § 200.41.

(c) *Technical assistance.* The SEA must make technical assistance available, through the statewide system of support and improvement required by section 1117 of the Act, to schools that LEAs have identified for improvement, corrective action, or restructuring.

(d) *LEA failure.* If the SEA determines that an LEA has failed to carry out its responsibilities with respect to school improvement, corrective action, or restructuring, the SEA must take the corrective actions it determines to be appropriate and in compliance with State law.

(e) *Assessment results.* (1) The SEA must ensure that the results of academic assessments administered as part of the State assessment system in a given school year are available to LEAs before the beginning of the next school year.

(2) The SEA must provide the results described in paragraph (e)(1) of this section to a school before an LEA may identify the school for school improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34.

(f) *Factors affecting student achievement.* Consistent with section 1111(b)(9) of the Act, the SEA must notify the Secretary of Education of major factors that have significantly affected student academic achievement in schools and LEAs identified for improvement within the State.

(Authority: 20 U.S.C. 6316)

23. Revise §§ 200.50 and 200.51 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.50 SEA review of LEA progress.

(a) *State review.* (1)(i) An SEA must annually review the progress of each LEA in its State that receives funds under subpart A of this part.

(ii) The review must determine whether—

(A) The LEA's schools served under subpart A of this part are making adequate yearly progress toward meeting the State's student academic achievement standards; and

(B) The LEA is carrying out its responsibilities under subpart A of this part with respect to technical assistance, parental involvement, and professional development.

(2) In reviewing the progress of an LEA, the SEA may, in the case of targeted assistance schools served by the LEA, consider the progress only of the students served or eligible for services under subpart A of this part, provided the students selected for services in such schools are those with the greatest need for academic assistance, consistent with the requirements of section 1115 of the Act.

(b) *Rewards.* If an LEA has exceeded adequate yearly progress as defined under §§ 200.13 through 200.20 for two consecutive years, the SEA may—

(1) Reserve funds in accordance with § 200.100(c); and

(2) Make rewards of the kinds described under section 1117 of the Act.

(c) *Opportunity for review of LEA-level data.* (1) Before identifying an LEA for improvement or corrective action, the SEA must provide the LEA with an opportunity to review the data, including academic assessment data, on which the SEA has based the proposed identification.

(2)(i) If the LEA believes that the proposed identification is in error for statistical or other substantive reasons, the LEA may provide supporting evidence to the SEA.

(ii) The SEA must consider the evidence before making a final determination not later than 30 days after it has provided the LEA with the opportunity to review the data under paragraph (c)(1) of this section.

(d) *Identification for improvement.* (1) The SEA must identify for improvement an LEA that, for two consecutive years, including the period immediately before January 8, 2002, fails to make adequate yearly progress as defined under §§ 200.13 through 200.20.

(2) The SEA must identify for improvement an LEA that was in improvement status on January 7, 2002.

(3) The SEA may identify an LEA for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA fails to make adequate yearly progress for a second consecutive year.

(4) The SEA may remove an LEA from improvement status if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA makes adequate yearly progress for a second consecutive year.

(e) *Identification for corrective action.* After providing technical assistance under § 200.52(b), the SEA—

(1) May take corrective action at any time with respect to an LEA that the SEA has identified for improvement under paragraph (d) of this section;

(2) Must take corrective action—

(i) With respect to an LEA that fails to make adequate yearly progress, as defined under §§ 200.13 through 200.20, by the end of the second full school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make adequate yearly progress for a second consecutive year and led to the SEA's identification for improvement under paragraph (d) of this section; and

(ii) With respect to an LEA that was in corrective action status on January 7, 2002; and

(3) May remove an LEA from corrective action if, on the basis of assessments administered by the LEA during the 2001–2002 school year, it makes adequate yearly progress for a second consecutive year.

(f) *Delay of corrective action.* (1) The SEA may delay implementation of corrective action under § 200.53 for a period not to exceed one year if—

(i) The LEA makes adequate yearly progress for one year; or

(ii) The LEA's failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the LEA's financial resources.

(2)(i) The SEA may not take into account the period of delay referred to in paragraph (f)(1) of this section in determining the number of consecutive years the LEA has failed to make adequate yearly progress; and

(ii) The SEA must subject the LEA to further actions following the period of delay as if the delay never occurred.

(g) *Continuation of public school choice and supplemental educational services.* An SEA must ensure that an LEA identified under paragraph (d) or (e) of this section continues to offer public school choice in accordance with § 200.44 and supplemental educational services in accordance with § 200.45.

(h) *Removal from improvement or corrective action status.* If an LEA makes adequate yearly progress for two consecutive years following identification for improvement under paragraph (d) of this section, the SEA need no longer—

(1) Identify the LEA for improvement; or

(2) Subject the LEA to corrective action for the succeeding school year.

(Authority: 20 U.S.C. 6316(c))

§ 200.51 Notice of SEA action.

(a) *In general.* (1) An SEA must—

(i) Communicate with parents throughout the review of an LEA under § 200.50; and

(ii) Ensure that, regardless of the method or media used, it provides information to parents—

(A) In an understandable and uniform format, including alternative formats upon request; and

(B) To the extent practicable, in a language that parents can understand.

(2) The SEA must provide information to parents—

(i) Directly, through such means as regular mail or, if possible, e-mail; and

(ii) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.

(3) All communications must respect the privacy of students and their families.

(b) *Results of review.* The SEA must publicize and disseminate to the LEAs, teachers and other staff, parents, students, and the community the results of its review under § 200.50, including statistically sound disaggregated results in accordance with §§ 200.2 and 200.7.

(c) *Identification for improvement or corrective action.* If the SEA identifies an LEA for improvement or subjects the LEA to corrective action, the SEA must promptly provide to the parents of each student enrolled in a school served by the LEA—

(1) The reasons for the identification; and

(2) An explanation of how parents can participate in upgrading the LEA.

(d) *Information about action taken.* (1) The SEA must publish, and disseminate to parents and the public, information on any corrective action the SEA takes under § 200.53.

(2) The SEA must provide this information—

(i) In a uniform and understandable format, including alternative formats upon request; and

(ii) To the extent practicable, in a language that parents can understand.

(3) The SEA must disseminate the information through such means as the Internet, the media, and public agencies.

(Authority: 20 U.S.C. 6316(c))

24. Add new §§ 200.52 through 200.54 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.52 LEA improvement.

(a) *Improvement plan.* (1) Not later than 3 months after an SEA has identified an LEA for improvement under § 200.50(d), the LEA must develop or revise an LEA improvement plan.

(2) The LEA must consult with parents, school staff, and others in developing or revising its improvement plan.

(3) The LEA improvement plan must:

(i) Incorporate strategies, drawn from scientifically based research, that will strengthen instruction in core academic subjects in schools served by the LEA.

(ii) Identify actions that have the greatest likelihood of improving the achievement of participating children in meeting the State's student academic achievement standards.

(iii) Address the professional development needs of the instructional staff serving the LEA by committing to spend for professional development not less than 10 percent of the funds received by the LEA under subpart A of this part for each fiscal year in which the SEA identifies the LEA for improvement. These funds—

(A) May include funds reserved by schools for professional development under § 200.41(c)(5); but

(B) May not include funds reserved for professional development under section 1119 of the Act.

(iv) Include specific measurable achievement goals and targets—

(A) For each of the groups of students described in the disaggregated data under § 200.13(b)(7); and

(B) That are consistent with adequate yearly progress as defined under §§ 200.13 through 200.20.

(v) Address—

(A) The fundamental teaching and learning needs in the schools of the LEA; and

(B) The specific academic problems of low-achieving students, including a determination of why the LEA's previous plan failed to bring about increased student academic achievement.

(vi) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year.

(vii) Specify the responsibilities of the SEA and LEA under the plan, including the technical assistance the SEA must provide under paragraph (b) of this section and the LEA's responsibilities under section 1120A of the Act.

(viii) Include strategies to promote effective parental involvement in the schools served by the LEA.

(4) The LEA must implement the improvement plan—including any revised plan—expeditiously, but not later than the beginning of the school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make adequate yearly progress for a second consecutive year and led to the SEA's identification of the LEA for improvement under § 200.50(d).

(b) *SEA technical assistance.* (1) An SEA that identifies an LEA for improvement under § 200.50(d) must, if requested, provide or arrange for the provision of technical or other assistance to the LEA, as authorized under section 1117 of the Act.

(2) The purpose of the technical assistance is to better enable the LEA to—

(i) Develop and implement its improvement plan; and

(ii) Work with schools needing improvement.

(3) The technical assistance provided by the SEA or an entity authorized by the SEA must—

(i) Be supported by effective methods and instructional strategies drawn from scientifically based research; and

(ii) Address problems, if any, in implementing the parental involvement and professional development activities described in sections 1118 and 1119, respectively, of the Act.

(Authority: 20 U.S.C. 6316(c))

§ 200.53 LEA corrective action.

(a) *Definition.* For the purposes of this section, the term ''corrective action'' means action by an SEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure that caused the SEA to identify an LEA for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the LEA;

(2) Is designed to increase substantially the likelihood that each group of students described in § 200.13(b)(7) and enrolled in the LEA's schools will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Notice and hearing.* Before implementing any corrective action under paragraph (c) of this section, the SEA must provide notice and a hearing to the affected LEA—if State law provides for this notice and hearing—not later than 45 days following the decision to take corrective action.

(c) *Requirements.* If the SEA identifies an LEA for corrective action, the SEA must do the following:

(1) Continue to make available technical assistance to the LEA.

(2) Take at least one of the following corrective actions:

(i) Defer programmatic funds or reduce administrative funds.

(ii) Institute and fully implement a new curriculum based on State and local content and academic achievement standards, including the provision of appropriate professional development for all relevant staff that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students.

(iii) Replace the LEA personnel who are relevant to the failure to make adequate yearly progress.

(iv) Remove particular schools from the jurisdiction of the LEA and establish alternative arrangements for public governance and supervision of these schools.

(v) Appoint a receiver or trustee to administer the affairs of the LEA in place of the superintendent and school board.

(vi) Abolish or restructure the LEA.

(vii) In conjunction with at least one other action in paragraph (c)(2) of this section—

(A) Authorize students to transfer from a school operated by the LEA to a higher-performing public school operated by another LEA in accordance with § 200.44, and

(B) Provide to these students transportation, or the costs of transportation, to the other school consistent with § 200.44(h).

(Authority: 20 U.S.C. 6316(c)(10))

§ 200.54 Rights of school and school district employees.

(a) Nothing in §§ 200.30 through 200.53 is intended to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between those employees and their employers in effect on January 8, 2002.

(b)(1) Any State or local law, regulation, or policy adopted after January 8, 2002 may not exempt an LEA from taking actions it may be required to take with respect to school or school district employees to implement §§ 200.30 through 200.53.

(2) When the collective bargaining agreements, memoranda of understanding, or other agreements referred to in paragraph (a) of this section are renegotiated, an LEA must ensure that those agreements do not prohibit actions that the LEA may be required to take with respect to school or school district employees to implement §§ 200.30 through 200.53.

(Authority: 20 U.S.C. 6316(d))

25. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.54 to read as follows:

Qualifications of Teachers and Paraprofessionals

26. Add new §§ 200.55 through 200.59 and place them under the new undesignated center heading ''Qualifications of Teachers and Paraprofessionals'' in subpart A of part 200 to read as follows:

§ 200.55 Qualifications of teachers.

(a) *Newly hired teachers in Title I programs.* (1) An LEA must ensure that all teachers hired after the first day of the 2002–2003 school year to teach core academic subjects in a program supported with funds under subpart A of this part are highly qualified as defined in § 200.56.

(2) For the purpose of paragraph (a)(1) of this section, a teacher teaching in a program supported with funds under subpart A of this part is—

(i) A teacher in a targeted assisted school who is paid with funds under subpart A of this part; or

(ii) A teacher in a schoolwide program school.

(b)(1) *All teachers of core academic subjects.* Not later than the end of the 2005–2006 school year, each State that receives funds under subpart A of this part must ensure that all teachers in the State who teach core academic subjects are highly qualified as defined in § 200.56.

(2) A teacher of a subject other than a core academic subject—such as some vocational education teachers—is not required to meet the requirements in § 200.56.

(c) *Definition.* The term ''core academic subjects'' means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 6319; 7801(11))

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

To be a ''highly qualified teacher,'' a teacher covered under § 200.55 must meet the requirements in paragraph (a) and either paragraph (b) or (c) of this section.

(a) *In general.* (1) Except as provided in paragraph (a)(2) of this section, a teacher covered under § 200.55 must—

(i) Have obtained full State certification as a teacher—which may include certification obtained through alternative routes to certification; or

(ii)(A) Have passed the State teacher licensing examination; and

(B) Hold a license to teach in the State.

(iii) A teacher meets the requirement in paragraphs (a)(1)(i) or (ii) of this section if the teacher—

(A) Has fulfilled the State's certification and licensure requirements applicable to the years of experience the teacher possesses; or

(B) Is participating in an alternate route certification program under which the teacher is—

(*1*) Permitted by the State to assume functions as a teacher; and

(*2*) Making satisfactory progress toward full certification as prescribed by the State and the program.

(2) A teacher teaching in a public charter school in a State must meet the certification and licensure requirements, if any, contained in a State's charter school law.

(3) If a teacher has had certification or licensure requirements waived on an emergency, temporary, or provisional basis, the teacher is not highly qualified.

(b) *Teachers new to the profession.* A teacher covered under § 200.55 who is new to the profession must—

(1) Hold at least a bachelor's degree; and

(2) At the elementary level, demonstrate, by passing a State test, subject knowledge and teaching skills in reading/language arts, writing, mathematics, and other areas of the basic elementary school curriculum; or

(3) At the middle and high school levels, demonstrate a high level of competency by—

(i) Passing a State test in each academic subject in which the teacher teaches; or

(ii) Successfully completing in each academic subject in which the teacher teaches—

(A) An undergraduate major;

(B) A graduate degree;

(C) Coursework equivalent to an undergraduate major; or

(D) Advanced certification or credentials.

(c) *Teachers not new to the profession.* A teacher covered under § 200.55 who is not new to the profession must—

(1) Hold at least a bachelor's degree;

(2) Meet the applicable requirements in paragraph (b) of this section; and

(3) Based on a high, objective, uniform State standard of evaluation in accordance with section 9101(23)(C)(ii) of the Act, demonstrate competence in all the academic subjects in which the teacher teaches.

(Authority: 20 U.S.C. 7801(23))

§ 200.57 Plans to increase teacher quality.

(a) *State plan.* (1) A State that receives funds under subpart A of this part must develop a plan to ensure that all teachers in the State who teach core academic subjects are highly qualified not later than the end of the 2005–2006 school year.

(2) The State's plan—

(i) Must establish annual measurable objectives for each LEA and school that include, at a minimum, an annual increase in the percentage of—

(A) Highly qualified teachers at each LEA and school; and

(B) Teachers who are receiving high-quality professional development as

defined in section 9101(34) of the Act; and

(ii) May include other measures that the State determines are appropriate to increase teacher qualifications.

(b) *Local plan.* An LEA that receives funds under subpart A of this part must develop a plan to ensure that all teachers in the LEA who teach core academic subjects are highly qualified not later than the end of the 2005–2006 school year.

(Authority: 20 U.S.C. 6319(a)(2)–(3); 7801(34))

§ 200.58 Qualifications of paraprofessionals.

(a)(1) *Applicability.* An LEA must ensure that each paraprofessional who works in a program supported with funds under subpart A of this part meets the requirements in paragraph (b) of this section and, except as provided in paragraph (e) of this section, the requirements in paragraph (c) or (d) of this section.

(2) For purposes of this section, the term ''paraprofessional''—

(i) Means an individual who provides instructional support consistent with § 200.59; and

(ii) Does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties).

(3) For the purpose of paragraph (a) of this section, a paraprofessional working in ''a program supported with funds under subpart A of this part'' is—

(i) A paraprofessional in a targeted assisted school who is paid with funds under subpart A of this part; or

(ii) Any paraprofessional in a schoolwide program school.

(b) *All paraprofessionals.* A paraprofessional covered under paragraph (a) of this section, regardless of the paraprofessional's hiring date, must have earned a secondary school diploma or its recognized equivalent.

(c) *New paraprofessionals.* A paraprofessional covered under paragraph (a) of this section who is hired after January 8, 2002 must have—

(1) Completed at least two years of study at an institution of higher education;

(2) Obtained an associate's or higher degree; or

(3)(i) Met a rigorous standard of quality, and can demonstrate—through a formal State or local academic assessment—knowledge of, and the ability to assist in instructing, as appropriate—

(A) Reading/language arts, writing, and mathematics; or

(B) Reading readiness, writing readiness, and mathematics readiness.

(ii) A secondary school diploma or its recognized equivalent is necessary, but not sufficient, to meet the requirement in paragraph (c)(3)(i) of this section.

(d) *Existing paraprofessionals.* Each paraprofessional who was hired before January 8, 2002 must meet the requirements in paragraph (c) of this section within four years after that date.

(e) *Exceptions.* A paraprofessional does not need to meet the requirements in paragraph (c) or (d) of this section if the paraprofessional—

(1)(i) Is proficient in English and a language other than English; and

(ii) Acts as a translator to enhance the participation of limited English proficient children under subpart A of this part; or

(2) Has duties that consist solely of conducting parental involvement activities.

(Authority: 20 U.S.C. 6319(c)–(f))

§ 200.59 Duties of paraprofessionals.

(a) A paraprofessional covered under § 200.58 may not be assigned a duty inconsistent with paragraph (b) of this section.

(b) A paraprofessional covered under § 200.58 may perform the following duties:

(1) One-on-one tutoring for eligible students if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher—that is, not during the regular school day.

(2) Assisting in classroom management.

(3) Assisting in computer instruction.

(4) Conducting parent involvement activities.

(5) Providing instructional support in a library or media center.

(6) Acting as a translator.

(7) Providing instructional support services.

(c)(1) A paraprofessional may not provide any instructional support service to a student unless the paraprofessional is working under the direct supervision of a teacher who meets the requirements in § 200.56.

(2) A paraprofessional works under the direct supervision of a teacher if—

(i) The teacher plans the instructional activities that the paraprofessional carries out;

(ii) The teacher evaluates the achievement of the students with whom the paraprofessional is working; and

(iii) The paraprofessional works in close and frequent physical proximity to the teacher.

(d) A paraprofessional may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under subpart A of this part—including non-instructional duties and duties that do not benefit participating students—if the amount of time the paraprofessional spends on those duties is the same proportion of total work time as the time spent by similar personnel at the same school.

(Authority: 20 U.S.C. 6319(g))

27. Revise § 200.60 and place it under the new undesignated center heading ''Qualifications of Teachers and Paraprofessionals'' in subpart A of part 200 to read as follows:

§ 200.60 Expenditures for professional development.

(a)(1) Unless a lesser amount is needed because most teachers and paraprofessionals covered under §§ 200.55 and 200.58 meet the requirements in those sections, an LEA must use funds it receives under subpart A of this part for professional development activities to ensure that teachers and paraprofessionals meet the requirements of §§ 200.56 and 200.58.

(2) The LEA must use these funds as follows:

(i) For each of fiscal years 2002 and 2003, the LEA must use not less than 5 percent or more than 10 percent of the funds it receives under subpart A of this part.

(ii) For each fiscal year after 2003, the LEA must use not less than 5 percent of the funds it receives under subpart A of this part.

(b) The LEA may use additional funds under subpart A of this part to support ongoing training and professional development, as defined in section 9101(34) of the Act, to assist teachers and paraprofessionals in carrying out activities under subpart A of this part.

(Authority: 20 U.S.C. 6319(h), (l); 7801(34))

27a. Add a new undesignated center heading following §200.60 to read as follows:

Participation of Eligible Children in Private Schools

28. Revise § 200.61 and place it under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200 to read as follows:

§ 200.61 Responsibilities for providing services to private school children.

(a) After timely and meaningful consultation with appropriate officials of private schools, an LEA must—

(1) In accordance with §§ 200.61 through 200.66 and section 1120 of the Act, provide special educational services or other benefits under subpart A of this part, on an equitable basis and

in a timely manner, to eligible children who are enrolled in private elementary and secondary schools; and

(2) Ensure that teachers and families of these children participate, on a basis equitable to the participation of teachers and families of other children receiving these services in accordance with § 200.53.

(b) Eligible private school children are children who—

(1) Reside in participating public school attendance areas of the LEA, regardless of whether the private school they attend is located in the LEA; and

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

(c) Among the eligible private school children, the LEA must select children to participate, consistent with § 200.63.

(Authority: 20 U.S.C. 6315(b); 6320(a))

29. Add § 200.62 and place it under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200 to read as follows:

§ 200.62 Consultation.

(a) In order to have timely and meaningful consultation, an LEA must consult with appropriate officials of private schools during the design and development of the LEA's program for eligible private school children.

(b) At a minimum, the LEA must consult on the following:

(1) How the LEA will identify the needs of eligible private school children.

(2) What services the LEA will offer to eligible private children.

(3) How and when the LEA will make decisions about the delivery of services.

(4) How, where, and by whom the LEA will provide services to eligible private school children.

(5) How the LEA will assess academically the services to private school children, and how the LEA will use the results of that assessment to improve Title I services.

(6) The size and scope of the equitable services that the LEA will provide to eligible private school children, and the proportion of funds that the LEA will allocate for these services.

(7) The method or sources of data that the LEA will use under § 200.78 to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data from a survey.

(8) The equitable services the LEA will provide to teachers and families of private school participating children.

(c)(1) Consultation by the LEA must—

(i) Include meetings of the LEA and appropriate officials of the private schools; and

(ii) Occur before the LEA makes any decision that affects the opportunity of eligible private school children to participate in Title I programs.

(2) The LEA must meet with officials of the private schools throughout the implementation and assessment of the Title I services.

(d)(1) Consultation must include—

(i) A discussion of service delivery mechanisms the LEA can use to provide equitable services to private school children; and

(ii) A thorough consideration and analysis of the views of the officials of the private schools on the provision of services through a contract with a third-party provider.

(2) If the LEA disagrees with the views of the officials of the private schools on the provision of services through a contract, the LEA must provide in writing to the officials of the private schools the reasons why the LEA chooses not to use a contractor.

(e)(1) The LEA must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

(2) If the officials of the private schools do not provide the affirmations within a reasonable period of time, the LEA must submit to the SEA documentation that the required consultation occurred.

(f) An official of a private school shall have the right to complain to the SEA that the LEA did not—

(1) Engage in timely and meaningful consultation; or

(2) Consider the views of the officials of the private school.

(Authority: 20 U.S.C. 6320(b))

30. Revise §§ 200.63 through 200.65 and place them under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200 to read as follows:

§ 200.63 Factors for determining equitable participation of private school children.

(a) *Equal expenditures.* (1) In the aggregate, funds expended by an LEA under subpart A of this part 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 paragraph (a)(2) of this section.

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

(i) In reserving funds off the top of its allocation to carry out the provisions of § 200.77, if the LEA reserves funds for instructional activities for public elementary or secondary school students at the district level, the LEA must provide equitable services to eligible private school children. The LEA must base equitable services from these reserved funds on the proportion of private school children from low-income families residing in participating public school attendance areas.

(ii) The LEA must reserve the amounts of funds generated by private school children under § 200.78 and, in consultation with appropriate officials of the private schools, may—

(A) Combine those amounts, along with funds under paragraph (a)(2)(i) of section, if appropriate, 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 § 200.78 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 that the LEA provides to public school children participating under subpart A of this part.

(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 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 the private school children achieving the high levels called for by the State's student academic achievement standards.

(3) The LEA must provide services to eligible private school children either directly or through arrangements with another LEA or a third-party provider.

(4) The LEA must make the final decisions with respect to the services it will provide to eligible private school children.

(Authority: 20 U.S.C. 6320(a))

§ 200.64 Determining equitable participation of teachers and families of participating private school children.

(a)(1) From funds reserved for parent involvement and professional development under § 200.77, an LEA shall ensure that teachers and families of participating private school children participate on an equitable basis in parent involvement and professional development activities, respectively.

(2) The LEA must base equitable services on the proportion of private school children from low-income families residing in participating public school attendance areas.

(b) After consultation with appropriate officials of the private schools, the LEA must conduct professional development and parent involvement activities for the families and teachers of participating private school children either—

(1) In conjunction with the LEA's professional development and parent involvement activities; or

(2) Independently.

(c) Private school teachers are not covered by the requirements in § 200.56.

(Authority: 20 U.S.C. 6320(a))

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

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

(b)(1) The LEA must use funds under subpart A of this part to meet the special educational needs of participating private school children.

(2) The LEA may not use funds under subpart A of this part A of this part for—

(i) The needs of the private school; or

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

(Authority: 20 U.S.C. 6320(a), 6321(b))

31. Add a new § 200.66 and place it under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200 to read as follows:

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

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

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

(c) The LEA must 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 LEA must remove equipment and supplies from a private school if—

(1) The LEA no longer needs the equipment and supplies to provide Title I services; or

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

(e) The LEA may not use funds under subpart A of this part for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 6320(d))

32. Place reserved §§ 200.67 through 200.69 under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200.

33–34. Add a new undesignated center heading to subpart A of part 200 and place it after reserved § 200.69 to read as follows:

Allocations to LEAS

35. Add new §§ 200.70 through 200.75 and place them under the revised undesignated center heading ''Allocations to LEAs'' in subpart A of part 200 to read as follows:

§ 200.70 Allocation of funds to LEAs in general.

(a) The Secretary allocates basic grants, concentration grants, targeted grants, and education finance incentive grants, through SEAs, to each eligible LEA for which the Bureau of the Census has provided data on the number of children from low-income families residing in the school attendance areas of the LEA (hereinafter referred to as the ''Census list'').

(b) In establishing eligibility and allocating funds under paragraph (a) of this section, the Secretary counts children ages 5 to 17, inclusive (hereinafter referred to as ''formula children'')—

(1) From families below the poverty level based on the most recent satisfactory data available from the Bureau of the Census;

(2) From families above the poverty level receiving assistance under the Temporary Assistance for Needy Families program under Title IV of the Social Security Act;

(3) Being supported in foster homes with public funds; and

(4) Residing in local institutions for neglected children.

(c) Except as provided in §§ 200.72, 200.75, and 200.100, an SEA may not change the Secretary's allocation to any LEA that serves an area with a total population of at least 20,000 persons.

(d) In accordance with § 200.74, an SEA may use an alternative method, approved by the Secretary, to distribute the State's share of basic grants, concentration grants, targeted grants, and education finance incentive grants to LEAs that serve an area with a total population of less than 20,000 persons.

(Authority: 20 U.S.C. 6333–6337)

§ 200.71 LEA eligibility.

(a) *Basic grants.* An LEA is eligible for a basic grant if the number of formula children counted for allocation purposes is—

(1) At least 10; and

(2) Greater than two percent of the LEA's total population ages 5 to 17 years, inclusive.

(b) *Concentration grants.* An LEA is eligible for a concentration grant if—

(1) The LEA is eligible for a basic grant under paragraph (a) of this section; and

(2) The number of formula children exceeds—

(i) 6,500; or

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

(c) *Targeted grants.* An LEA is eligible for a targeted grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(d) *Education finance incentive grants.* An LEA is eligible for an education finance incentive grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(Authority: 20 U.S.C. 6333–6337)

§ 200.72 Procedures for adjusting allocations determined by the Secretary to account for eligible LEAs not on the Census list.

(a) *General.* For each LEA not on the Census list (hereinafter referred to as a ''new'' LEA), an SEA must determine the number of formula children and the number of children ages 5 to 17, inclusive, in that LEA.

(b) *Determining LEA eligibility.* An SEA must determine basic grant, concentration grant, targeted grant, and education finance incentive grant eligibility for each new LEA and redetermine eligibility for the LEAs on the Census list, as appropriate, based on the number of formula children and

children ages 5 to 17, inclusive, determined in paragraph (a) of this section.

(c) *Adjusting LEA allocations.* An SEA must adjust the LEA allocations calculated by the Secretary to determine allocations for eligible new LEAs based on the number of formula children determined in paragraph (a) of this section.

(Authority: 20 U.S.C. 6333–6337)

§ 200.73 Applicable hold-harmless provisions.

(a) *General.* (1) Except as authorized under paragraph (c) of this section and § 200.100(d)(2), an SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts established under paragraph (a)(4) of this section.

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

(3) Except as provided in § 200.100(d), an SEA must apply the hold-harmless requirement separately for basic grants, concentration grants, targeted grants, and education finance incentive grants as described in paragraph (a)(4) of this section.

(4) Under section 1122(c) of the Act, the hold-harmless percentage varies based on the LEA's proportion of formula children, as shown in the following table:

LEA's number of formula children ages 5 to 17, inclusive, as a percentage of its total population of children ages 5 to 17, inclusive	Hold-harmless percentage	Applicable grant formulas
(i) 30% or more	95	Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants.
(ii) 15% or more but less than 30%	90	
(iii) Less than 15%	85	

(b) *Targeted grants and education finance incentive grants.* The number of formula children used to determine the hold-harmless percentage is the number before applying the weights described in section 1125 and section 1125A of the Act.

(c) *Adjustment for insufficient funds.* If the amounts made available to the State are insufficient to pay the full amount that each LEA is eligible to receive under paragraph (a)(4) of this section, the SEA must ratably reduce the allocations for all LEAs in the State to the amount available.

(d) *Eligibility for hold-harmless protection.* (1) An LEA must meet the eligibility requirements for basic grants, targeted grants, and education finance incentive grants under § 200.71 in order for any hold-harmless provision to apply.

(2) An LEA not meeting the eligibility requirements for concentration grants under § 200.71 must be paid its hold-harmless amount for four consecutive years.

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

§ 200.74 Use of an alternative method to distribute grants to LEAs with fewer than 20,000 total residents.

(a) For eligible LEAs serving an area with a total population of less than 20,000 persons (hereinafter referred to as ''small LEAs''), an SEA may apply to the Secretary to use an alternative method to distribute basic grant, concentration grant, targeted grant, and education finance incentive grant funds.

(b) In its application, the SEA must—

(1) Identify the alternative data it proposes to use; and

(2) Assure that it has established a procedure through which a small LEA that is dissatisfied with the determination of its grant may appeal directly to the Secretary.

(c) The SEA must base its alternative method on population data that best reflect the current distribution of children from low-income families among the State's small LEAs and use the same poverty measure consistently across the State for all Title I, part A programs.

(d) Based on the alternative poverty data selected, the SEA must—

(1) Redetermine eligibility of its small LEAs for basic grants, concentration grants, targeted grants, and education finance incentive grants in accordance with § 200.71;

(2) Calculate allocations for small LEAs in accordance with the provisions of sections 1124, 1124A, 1125, and 1125A of the Act, as applicable; and

(3) Ensure that each LEA receives the hold-harmless amount to which it is entitled under § 200.73.

(e) The amount of funds available for redistribution under each formula is the separate amount determined by the Secretary under sections 1124, 1124A, 1125, and 1125A of the Act for eligible small LEAs after the SEA has made the adjustments required under § 200.72(c).

(f) If the amount available for redistribution to small LEAs under an alternative method is not sufficient to satisfy applicable hold-harmless requirements, the SEA must ratably reduce all eligible small LEAs to the amount available.

(Authority: 20 U.S.C. 6333–6337)

§ 200.75 Special procedures for allocating concentration grant funds in small States.

(a) In a State in which the number of formula children is less than 0.25 percent of the national total on January 8, 2002, an SEA may either—

(1) Allocate concentration grants among eligible LEAs in the State in accordance with §§ 200.72 and 200.74, as applicable; or

(2) Without regard to the allocations determined by the Secretary—

(i) Identify those LEAs in which the number or percentage of formula children exceeds the statewide average number or percentage of those children; and

(ii) Allocate concentration grant funds among the LEAs identified in paragraph (a)(2)(i) of this section based on the number of formula children in each of those LEAs.

(b) If the SEA in a small State meeting the criteria described in paragraph (a) of this section uses an alternative method under § 200.74, the SEA must use the poverty data approved under the alternative method to identify those LEAs with numbers or percentages of formula children that exceed the statewide average number or percentage of those children for the State as a whole.

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

36. Add and reserve new § 200.76 and place it under the revised undesignated center heading ''Allocations to LEAs'' in subpart A of part 200.

36a. Add a new undesignated center heading following §200.76 to read as follows:

Procedures for the Within-District Allocation of LEA Program Funds

37. Add new §§ 200.77 and 200.78 and place them under the undesignated center heading ''Procedures for the Within-District Allocation of LEA Program Funds'' in subpart A of part 200 to read as follows:

§ 200.77 Reservation of funds by an LEA.

Before allocating funds in accordance with § 200.78, an LEA must 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) Homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where homeless children may live;

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

(3) If appropriate—

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

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

(b) Provide, where appropriate under section 1113(c)(4) of the Act, financial incentives and rewards to teachers who serve students in Title I schools identified for school improvement, corrective action, and restructuring;

(c) Meet the requirements for choice-related transportation and supplemental educational services in § 200.48, unless the LEA meets these requirements with non-Title I funds;

(d) Address the professional development needs of instructional staff, including—

(1) Professional development requirements under § 200.52(a)(2)(iii) if the LEA has been identified for improvement or corrective action; and

(2) Professional development expenditure requirements under § 200.60;

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

(f) Administer programs for public and private school children under this part, including special capital expenses, if any, incurred in providing services to eligible private school children, such as—

(1) The purchase and lease of real and personal property (including mobile educational units and neutral sites);

(2) Insurance and maintenance costs;

(3) Transportation; and

(4) Other comparable goods and services, including non-instructional computer technicians; and

(g) Conduct other authorized activities, such as school improvement and coordinated services.

(Authority: 20 U.S.C. 6313(c)(3) and (4), 6316(b)(10), (c)(7)(iii), and (e)(6), 6318(a)(3), 6319(l), 6320).

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

(a)(1) An LEA must allocate funds under subpart A of this part to school attendance areas and 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)(i) In calculating the total number of children from low-income families, the LEA must include children from low-income families who attend private schools.

(ii) To obtain a count of private school children, the LEA may—

(A) Use the same poverty data the LEA uses to count public school children;

(B)(*1*) Use comparable poverty data from a different source such as a private school survey that, to the extent possible, protects the identity of families of private school students; and

(*2*) Extrapolate data from the survey based on a representative sample if complete actual data are unavailable;

(C) Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or

(D) Use an equated measure of low income correlated with the measure of low income used to count public school children.

(iii) An LEA may count private school children from low-income families every year or every two years.

(iv) The LEA shall have the final authority in determining the method used to calculate the number of private school children from low-income families;

(3) If an LEA ranks its school attendance areas and schools by grade span groupings, the LEA may determine the percentage of children from low-income families in the LEA as a whole or for each grade span grouping.

(b)(1) Except as provided in paragraphs (b)(2) and (d) of this section, an LEA must 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 part A, subpart 2 of Title I. The LEA must calculate this per-pupil amount before it reserves funds under § 200.77, using the poverty measure selected by the LEA under section 1113(a)(5) of the Act.

(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 § 200.79.

(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), 6320(a) and (c)(1), 6333(c)(2)).

38. Add a new undesignated center heading to subpart A of part 200 and place it after new § 200.78 to read as follows:

Fiscal Requirements

39. Add new § 200.79 and place it under the new undesignated center heading ''Fiscal Requirements'' in subpart A of part 200 to read as follows:

§ 200.79 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For the purpose of determining compliance with the supplement not supplant requirement in section 1120A(b) and the comparability requirement in section 1120A(c) of the Act, a grantee or subgrantee under subpart A of this part may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 40 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging academic achievement standards that all children are expected to meet;

(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 academic achievement standards; and

(iv) Uses the State's assessment system under § 200.2 to review the effectiveness of the program; or

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

(ii) Provides supplementary services designed to meet the special educational needs of the children who are participating in the program to support their achievement toward meeting the State's academic achievement standards; and

(iii) Uses the State's assessment system under § 200.2 to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under section 1113(b)(1)(D) and 1113(c)(2)(B) of the Act.

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

40. Revise subpart B of part 200 to read as follows:

Subpart B—Even Start Family Literacy Programs

Sec.

Subpart B—Even Start Family Literacy Programs

§ 200.80 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 § 200.81.

(Authority: 20 U.S.C. 6381a and 20 U.S.C. 6399)

41. Revise subpart C of part 200 to read as follows:

Subpart C—Migrant Education Program

Sec.

Subpart C—Migrant Education Program

§ 200.81 Program definitions.

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

(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 migrates 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, in the preceding 36 months, resided in a school district of more than 15,000 square miles, and moved a distance of 20 miles or more to a temporary residence to engage in a fishing activity as a principal means of livelihood.

(f) Principal means of livelihood means that temporary or seasonal agricultural or fishing activity plays an important part in providing a living for the worker and his or her family.

(Authority: 20 U.S.C. 6391–6399, 6571)

§ 200.82 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 § 200.101, that are unique to the MEP, including those that are the same or similar to administrative activities performed by LEAs in the State under subpart A of this part. 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;

(e) Development of a statewide needs assessment and a comprehensive State plan for service delivery; and

(f) Supervision of instructional and support staff.

(Authority: 20 U.S.C. 6392, 6571)

§ 200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.

(a) An SEA that receives a grant of MEP funds must develop and update a written comprehensive State plan (based on a current statewide needs assessment) that, at a minimum, has the following components:

(1) *Performance targets.* The plan must specify—

(i) Performance targets that the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as the State's performance targets, if any, for school readiness; and

(ii) Any other performance targets that the State has identified for migratory children.

(2) *Needs assessment.* The plan must include an identification and assessment of—

(i) The unique educational needs of migratory children that result from the childrens' migratory lifestyle; and

(ii) Other needs of migratory students.

(3) *Service delivery.* The plan must describe the strategies that the SEA will pursue on a statewide basis to achieve the performance targets in paragraph (a)(1) of this section by addressing—

(i) First, the unique educational needs of migratory children consistent with paragraph (a)(2)(i) of this section; and

(ii) Then, the general educational needs of migratory children consistent with paragraph (a)(2)(ii) of this section.

(4) *Evaluation.* The plan must describe how the State will evaluate the effectiveness of its program.

(b) The SEA must develop its comprehensive State plan in consultation with the State parent advisory council or, for SEAs not operating programs for one school year in duration, in consultation with the parents of migratory children.

(c) Each SEA receiving MEP funds must ensure that its local operating agencies comply with the comprehensive State plan.

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

§ 200.84 Responsibilities of SEAs for evaluating the effectiveness of the MEP.

Each SEA must determine the effectiveness of its program through a written evaluation that measures the implementation and results achieved by the program against the State's performance targets in § 200.83(a)(1), particularly for those students who have priority for service as defined in section 1304(d) of the Act.

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

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

While the specific school improvement requirements of section 1116 of the Act do not apply to the MEP, SEAs and local operating agencies receiving MEP funds must use the results of the evaluation carried out under § 200.84 to improve the services provided to migratory children.

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

§ 200.86 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 § 200.28(c)(3)(i).

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

§ 200.87 Responsibilities for participation of children in private schools.

An SEA and its operating agencies must conduct programs and projects under subpart C of this part in a manner consistent with the basic requirements of section 9501 of the Act.

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

§ 200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the Act, a grantee or subgrantee under part C of Title I may exclude supplemental State and local funds expended in any school attendance area or school for carrying out special programs that meet the intent and purposes of part C of Title I.

(b) Before funds for a State and local program may be excluded for purposes of these requirements, the SEA must make an advance written determination that the program meets the intent and purposes of part C of Title I.

(c) A program meets the intent and purposes of part C of Title I if it meets the following requirements:

(1) The program is specifically designed to meet the unique educational needs of migratory children, as defined in section 1309 of the Act;

(2) The program is based on performance targets related to educational achievement that are similar to those used in programs funded under part C of Title I of the Act, and is evaluated in a manner consistent with those program targets;

(3) The grantee or subgrantee keeps, and provides access to, records that ensure the correctness and verification of these requirements; and

(4) The grantee monitors program performance to ensure that these requirements are met.

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

§ 200.89 [Reserved]

42. Revise subpart D of part 200 to read as follows:

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

Sec.

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

§ 200.90 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 § 200.103(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 the term ''immigrant children'' is defined in section 3301 of the Act and the term ''limited English proficient'' is defined in section 9101 of the Act, except that the terms ''individual'' and ''children and youth'' used in those definitions 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 § 200.81(d).

(Authority: 20 U.S.C. 6432, 6454, 6472, 7801)

§ 200.91 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 must 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 must 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 must 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)

§§ 200.92—200.99 [Reserved]

43. Revise subpart E of part 200 to read as follows:

Subpart E—General Provisions

Sec.

Subpart E—General Provisions

§ 200.100 Reservation of funds for school improvement, State administration, and the State academic achievement award program.

A State must reserve funds for school improvement, State administration, and State academic achievement awards as follows:

(a) *School improvement.* (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the Act, an SEA must first reserve—

(i) Two percent from the sum of the amounts allocated to the State under section 1002(a) of the Act for fiscal years 2002 and 2003; and

(ii) Four percent from the sum of the amounts allocated to the State under section 1002(a) of the Act for fiscal year 2004 and succeeding years.

(2) In reserving funds under paragraph (a)(1) of this section, a State may not reduce the sum of the allocations an LEA receives under section 1002(a) of the Act below the sum of the allocations the LEA received under section 1002(a) for the preceding fiscal year.

(3) If funds under section 1002(a) are insufficient in a given fiscal year to implement both paragraphs (a) (1) and (2) of this section, a State is not required to reserve the full amount required under paragraph (a)(1).

(b) *State administration.* (1) An SEA may reserve for State administrative activities authorized in sections 1004 and 1903 of the Act no more than the greater of—

(i) 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

(ii) $400,000 ($50,000 for the Outlying Areas).

(2)(i) An SEA reserving $400,000 under paragraph (b)(1)(ii) of this section must reserve proportionate amounts from each of the amounts allocated to the State or Outlying Area under section 1002(a), but is not required to reserve proportionate amounts from section 1002 (a), (c), and (d) of the Act.

(ii) If an SEA reserves funds from the amounts allocated to the State or Outlying Area under section 1002 (c) or (d) of the Act, the SEA may not reserve from those allocations more than the amount the SEA would have reserved if it had reserved proportionate amounts from section 1002 (a), (c), and (d) of the Act.

(3) If the sum of the amounts allocated to all the States under section 1002 (a), (c), and (d) of the Act is greater than $14,000,000,000, an SEA may not reserve more than one percent of the amount the State would receive if $14,000,000,000 had been allocated among the States under section 1002 (a), (c), and (d) of the Act.

(4) An SEA may use the funds it has reserved under this paragraph to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under Title I, parts A, C, and D of the Act.

(c) *State academic achievement awards program.* To operate the State academic achievement award program authorized under section 1117 (b)(1) and (c)(2)(A) of the Act, an SEA may reserve up to five percent of the excess amount the State receives under section 1002(a) of the Act when compared to the amount the State received under section 1002(a) of the Act in the preceding fiscal year.

(d) *Reservations and hold-harmless.* In reserving funds under paragraphs (b) and (c) of this section, an SEA may—

(1) Proportionately reduce each LEA's total allocation received under section 1002(a) of the Act while ensuring that no LEA receives in total less than the hold-harmless percentage under § 200.73(a)(4), except that when the amount remaining is insufficient to pay all LEAs the hold-harmless amount provided in § 200.73, the SEA shall ratably reduce each LEA's hold-harmless allocation to the amount available; or

(2) Proportionately reduce each LEA's total allocation received under section 1002(a) of the Act even if an LEA's total allocation falls below its hold-harmless percentage under § 200.74(a)(3).

(Authority: 20 U.S.C. 6303, 6304, 6317(c)(2)(A))

§§ 200.101–200.102 [Reserved]

§ 200.103 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 below the age and grade level at which the agency provides free public education.

(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.

(Authority: 20 U.S.C. 6315, 6571)

§§ 200.104–200.109 [Reserved]

[FR Doc. 02–19539 Filed 7–31–02; 4:01 pm]

BILLING CODE 4000–01–P