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(2) of this section, a State is not required to reserve the full amount required under paragraph (a)(1) of this section.

(b) *State administration.*(1) An SEA may reserve for State administrative activities authorized in sections 1004 and 1603 of the ESEA 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 ESEA; 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 ESEA.

(ii) If an SEA reserves funds from the amounts allocated to the State or Outlying Area under section 1002(c) or (d) of the ESEA, 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 ESEA.

(3) If the sum of the amounts allocated to all the States under section 1002(a), (c), and (d) of the ESEA 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 ESEA.

(4) An SEA may use the funds it has reserved under paragraph (b) of this section 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 ESEA.

(c) *Direct student services.* To carry out direct student services authorized under section 1003A of the ESEA, an SEA may, after meaningful consultation with geographically diverse LEAs, reserve not more than three percent of the amounts allocated to the State under subpart 2 of part A of title I of the ESEA for each 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 ESEA 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 subpart 2 of part A of title I of the ESEA even if an LEA's total allocation falls below its hold-harmless percentage under §200.73(a)(4).

(Approved by the Office of Management and Budget under control number 1810-0622)

[67 FR 71736, Dec. 2, 2002, as amended at 84 FR 31677, July 2, 2019]

§§ 200.101–200.102 [Reserved]

§ 200.103 Definitions.

The following definitions apply to programs operated under this part:

(a) *Child with a disability* means child with a disability, as defined in section 602(3) of the IDEA.

(b) *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.

(c) *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.

[67 FR 71738, Dec. 2, 2002, as amended at 72 FR 17781, Apr. 9, 2007; 84 FR 31678, July 2, 2019]

INNOVATIVE ASSESSMENT DEMONSTRATION AUTHORITY

§ 200.104 Innovative assessment demonstration authority.

(a) *In general.* (1) The Secretary may provide a State educational agency

(SEA), or consortium of SEAs, with authority to establish and operate an innovative assessment system in its public schools (hereinafter referred to as “innovative assessment demonstration authority”).

(2) An SEA or consortium of SEAs may implement the innovative assessment demonstration authority during its demonstration authority period and, if applicable, extension or waiver period described in §200.108(a) and (c), after which the Secretary will either approve the system for statewide use consistent with §200.107 or withdraw the authority consistent with §200.108(b).

(b) *Definitions.* For purposes of §§200.104 through 200.108—

(1) *Affiliate member of a consortium* means an SEA that is formally associated with a consortium of SEAs that is implementing the innovative assessment demonstration authority, but is not yet a full member of the consortium because it is not proposing to use the consortium’s innovative assessment system under the demonstration authority, instead of, or in addition to, its statewide assessment under section 1111(b)(2) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (hereinafter “the Act”) for purposes of accountability and reporting under sections 1111(c) and 1111(h) of the Act.

(2) *Demonstration authority period* refers to the period of time over which an SEA, or consortium of SEAs, is authorized to implement the innovative assessment demonstration authority, which may not exceed five years and does not include the extension or waiver period under §200.108. An SEA must use its innovative assessment system in all participating schools instead of, or in addition to, the statewide assessment under section 1111(b)(2) of the Act for purposes of accountability and reporting under section 1111(c) and 1111(h) of the Act in each year of the demonstration authority period.

(3) *Innovative assessment system* means a system of assessments, which may include any combination of general assessments or alternate assessments aligned with alternate academic achievement standards, in reading/lan-

guage arts, mathematics, or science administered in at least one required grade under §200.5(a)(1) and section 1111(b)(2)(B)(v) of the Act that—

(i) Produces—

(A) An annual summative determination of each student’s mastery of grade-level content standards aligned to the challenging State academic standards under section 1111(b)(1) of the Act; or

(B) In the case of a student with the most significant cognitive disabilities assessed with an alternate assessment aligned with alternate academic achievement standards under section 1111(b)(1)(E) of the Act and aligned with the State’s academic content standards for the grade in which the student is enrolled, an annual summative determination relative to such alternate academic achievement standards for each such student; and

(ii) May, in any required grade or subject, include one or more of the following types of assessments:

(A) Cumulative year-end assessments.

(B) Competency-based assessments.

(C) Instructionally embedded assessments.

(D) Interim assessments.

(E) Performance-based assessments.

(F) Another innovative assessment design that meets the requirements under §200.105(b).

(4) *Participating LEA* means a local educational agency (LEA) in the State with at least one school participating in the innovative assessment demonstration authority.

(5) *Participating school* means a public school in the State in which the innovative assessment system is administered under the innovative assessment demonstration authority instead of, or in addition to, the statewide assessment under section 1111(b)(2) of the Act and where the results of the school’s students on the innovative assessment system are used by its State and LEA for purposes of accountability and reporting under section 1111(c) and 1111(h) of the Act.

(c) *Peer review of applications.* (1) An SEA or consortium of SEAs seeking innovative assessment demonstration authority under paragraph (a) of this section must submit an application to the

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Secretary that demonstrates how the applicant meets all application requirements under § 200.105 and that addresses all selection criteria under § 200.106.

(2) The Secretary uses a peer review process, including a review of the SEA's application to determine that it meets or will meet each of the requirements under § 200.105 and sufficiently addresses each of the selection criteria under § 200.106, to inform the Secretary's decision of whether to award the innovative assessment demonstration authority to an SEA or consortium of SEAs. Peer review teams consist of experts and State and local practitioners who are knowledgeable about innovative assessment systems, including—

(i) Individuals with past experience developing innovative assessment and accountability systems that support all students and subgroups of students described in section 1111(c)(2) of the Act (e.g., psychometricians, measurement experts, researchers); and

(ii) Individuals with experience implementing such innovative assessment and accountability systems (e.g., State and local assessment directors, educators).

(3)(i) If points or weights are assigned to the selection criteria under § 200.106, the Secretary will inform applicants in the application package or a notice published in the FEDERAL REGISTER of—

(A) The total possible score for all of the selection criteria under § 200.106; and

(B) The assigned weight or the maximum possible score for each criterion or factor under that criterion.

(ii) If no points or weights are assigned to the selection criteria and selected factors under § 200.106, the Secretary will evaluate each criterion equally and, within each criterion, each factor equally.

(d) *Initial demonstration period.* (1) The initial demonstration period is the first three years in which the Secretary awards at least one SEA, or consortium of SEAs, innovative assessment demonstration authority, concluding with publication of the progress report described in section 1204(c) of the Act. During the initial demonstration pe-

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riod, the Secretary may provide innovative assessment demonstration authority to—

(i) No more than seven SEAs in total, including those SEAs participating in consortia; and

(ii) Consortia that include no more than four SEAs.

(2) An SEA that is an affiliate member of a consortium is not included in the application under paragraph (c) of this section or counted toward the limitation in consortia size under paragraph (d)(1)(ii) of this section.

(Authority: 20 U.S.C. 1221e-3, 3474, 6364, 6571)
[81 FR 88966, Dec. 8, 2016]

§ 200.105 Demonstration authority application requirements.

An SEA or consortium of SEAs seeking the innovative assessment demonstration authority must submit to the Secretary, at such time and in such manner as the Secretary may reasonably require, an application that includes the following:

(a) *Consultation.* Evidence that the SEA or consortium has developed an innovative assessment system in collaboration with—

(1) Experts in the planning, development, implementation, and evaluation of innovative assessment systems, which may include external partners; and

(2) Affected stakeholders in the State, or in each State in the consortium, including—

(i) Those representing the interests of children with disabilities, English learners, and other subgroups of students described in section 1111(c)(2) of the Act;

(ii) Teachers, principals, and other school leaders;

(iii) LEAs;

(iv) Representatives of Indian tribes located in the State;

(v) Students and parents, including parents of children described in paragraph (a)(2)(i) of this section; and

(vi) Civil rights organizations.

(b) *Innovative assessment system.* A demonstration that the innovative assessment system does or will—

(1) Meet the requirements of section 1111(b)(2)(B) of the Act, except that an innovative assessment—