No Child Left Behind—2008
Summary of Final Title I Regulations

The reforms introduced into the *Elementary and Secondary Education Act of 1965* (*ESEA*) by the *No Child Left Behind Act of 2001* (*NCLB*) fundamentally changed the way that states and districts approach the challenge of educating all students to achieve high standards. These final regulations respond to the lessons learned from six years of implementing these reforms, and build on the advances states have made with their assessment and accountability systems. The Department carefully considered the more than 400 comments received after issuing the proposed regulations in April 2008 and made several substantive changes based on those comments. What follows is a summary of the final regulations, which amend the current regulations in certain key areas.

Assessments, Accountability, and Transparency

1. Assessments and Multiple Measures

The final regulations clarify the meaning of the statutory requirement that state assessments "involve multiple up-to-date measures of student academic achievement." They clarify that states may meet this requirement by including, in their assessments, single- or multiple-question formats (e.g., multiple choice, extended response) that range in difficulty within a single assessment, as well as multiple assessments within a subject area (e.g., reading and writing assessments to measure reading/language arts).

Rationale: *The final regulations address a common misunderstanding that accountability under Title I must be based on a single measure or form of assessment.*

2. National Technical Advisory Council (National TAC)

The final regulations require the secretary to establish a National TAC to advise the Department on technical issues related to the design and implementation of state standards, assessments, and accountability systems, as well as on broad issues that affect all states. The National TAC is subject to the *Federal Advisory Committee Act* (*FACA*); thus, notices of meetings and summaries of proceedings are available, and meetings are open to the public.

Rationale: *Establishing the National TAC in the final regulations ensures that the Department will continue to benefit from expert advice in its efforts to ensure that state standards and assessments are of the highest technical quality and that state accountability systems hold schools and districts accountable for the achievement of all students.*

3. Minimum Group Size and Inclusion of Students in Accountability

The final regulations require each state to explain in its Title I Accountability Workbook how its minimum group size and other components of its adequate yearly progress (AYP) definition (e.g., confidence intervals, performance indexes, definition of "full academic year") interact to provide statistically reliable information while ensuring the maximum inclusion of all students and student subgroups in AYP determinations. Each state must also include, in its Accountability Workbook, the number and percentage of students and subgroups excluded from school-level accountability determinations. States must submit to the Department their revised Accountability Workbook for technical assistance and peer review in time to implement the new regulatory requirements for AYP determinations based on school year 2009–10 assessment results.

Rationale: *While it is important to ensure statistical reliability in state AYP determinations, such efforts must not undermine the strong subgroup accountability that is a core NCLB principle. The final regulations continue to give states flexibility to use various statistical measures as part of their AYP definitions, while also requiring that they ensure that those measures maximize the inclusion of students and student subgroups in accountability determinations.*

4. National Assessment of Educational Progress (NAEP) Data on State and District Report Cards

The final regulations require states and districts to include on their report cards the most recent NAEP reading and mathematics results for the state and to also include the participation rates for students with disabilities and for limited English proficient students. For state report cards, the data must be disaggregated for each subgroup (i.e., data must be broken down by student subgroups).

Rationale: *The NAEP is a nationally representative benchmark that parents and the public can use to evaluate the performance of their state and district. Including state-level NAEP results on state and district report cards gives parents easy access to this important information.*

5a. A Uniform and Accurate Definition of Graduation Rate: The Four-year Adjusted Cohort Graduation Rate

The final regulations define the "four-year adjusted cohort graduation rate" as the number of students who graduate in four years with a regular high school diploma divided by the number of students who entered high school four years earlier.

- Students who graduate in four years include students who earn a regular high school diploma at the end of their fourth year; before the end of their fourth year; and, if a state chooses, during a summer session immediately following their fourth year.
- To remove a student from a cohort, a school or district must confirm in writing that the student has transferred out, emigrated to another country, or is deceased.
- For students who transfer out of a school, the written confirmation must be official and document that the student has enrolled in another school or in an educational program that culminates in a regular high school diploma.

Rationale: *An accurate method of calculating graduation rates that is uniform across states is necessary to improve high school accountability. Requiring school officials to have written confirmation before removing a student from a cohort will improve the accuracy of graduation rate calculations. Written confirmation also will ensure that students who have dropped out of school are not counted as transfers and will consequently hold schools accountable for dropouts and others who do not graduate from high school with a regular diploma.*

5b. Timeline to Implement the Four-year Adjusted Cohort Graduation Rate

The four-year adjusted cohort graduation rate must be reported at the high school, district, and state levels in the aggregate, as well as disaggregated by subgroups, beginning with report cards providing results of assessments

administered in the 2010-11 school year. For AYP decisions, states must use the four-year adjusted cohort graduation rate at the state, district, and school levels, including disaggregated graduation rates for all required subgroups, based on assessments administered in the 2011-12 school year.

Rationale: *According to the 2008 report from the National Governors Association, the great majority of states will have the capability to implement an adjusted cohort graduation rate by the 2010–11 school year. This timeline will maximize the number of states using the rate as soon as possible, and as a result, the Averaged Freshman Graduation Rate (AFGR) that was included in the proposed regulations is not required as the interim measure for all states.*

5c. Option to Use an Extended-year Adjusted Cohort Graduation Rate or Rates

The final regulations permit states to propose, for approval by the secretary, one or more extended-year adjusted cohort graduation rates that take into account students who graduate in more than four years.

- Any extended-year adjusted cohort graduation rate must be reported separately from the four-year adjusted cohort graduation rate.
- A state desiring to use one or more extended-year adjusted cohort graduation rates must describe to the secretary how it plans to use the extended-year rate along with the four-year adjusted cohort graduation rate in determining whether its schools and districts make AYP, while still holding them accountable for graduating the vast majority of their students within four years.

Rationale: *An extended-year adjusted cohort graduation rate will give states, districts, and schools credit for students who take longer than four years to graduate with a regular high school diploma.*

5d. Graduation Rate Goal, Targets, and AYP

The final regulations provide that for a school or district to make AYP, it must meet or exceed the state's graduation rate goal or demonstrate continuous and substantial improvement from the prior year toward meeting that goal. Each state must submit the following for peer review and approval by the secretary:

- A single graduation rate goal that represents the rate the state expects all high schools in the state to meet; and
- Annual graduation rate targets that reflect continuous and substantial improvement from the prior year toward meeting or exceeding that goal.

Rationale: *At a time when a high school diploma is the minimum credential needed for success in the labor force, high schools and districts with low rates of graduation should be held accountable for improving their graduation rates. States must set aggressive goals and annual targets in order to hold districts and schools accountable for graduating more of their students each year.*

5e. Disaggregating Graduation Rate Data

The final regulations require:

- Prior to school year 2010–11, reporting the graduation rate in the aggregate and disaggregated by subgroups at the high school, district, and state levels using either the four-year adjusted cohort graduation rate or a transitional graduation rate;
- Reporting the four-year adjusted cohort graduation rate in the aggregate and disaggregated by subgroups at the high school, district, and state levels on report cards providing results of assessments administered in the 2010–11 school year; and
- Using the four-year adjusted cohort graduation rate, in the aggregate and disaggregated by subgroups, for school, district, and state AYP determinations, beginning with those determinations based on school year 2011–12 assessment results.

Rationale: *High school graduation rates vary widely by student subgroup, reflecting the achievement gaps between poor and minority students and their more advantaged peers. Requiring the use of disaggregated graduation rate data for both reporting and determining AYP will ensure that schools, districts, and states focus their efforts on improving the graduation rate of all student groups.*

5f. Extension of the Deadline

The final regulations permit a state that cannot meet the 2010–11 deadline for reporting the four-year adjusted cohort graduation rate to request an extension of time from the secretary. In order to receive an extension, a state must:

- Submit its request by March 2, 2009;
- Provide evidence demonstrating that it cannot meet the deadline; and
- Provide a detailed plan and timeline addressing the steps the state will take to implement, as expeditiously as possible, the four-year adjusted cohort graduation rate.

A state that receives an extension must use its transitional graduation rate, in the aggregate and disaggregated by subgroups, to make AYP determinations based on the 2011–12 school year assessment results.

Rationale: *For the few states that may not be able to meet the deadline for implementing the four-year adjusted cohort graduation rate, the final regulations permit the state to request an extension of the deadline.*

6. Including Individual Student Growth in AYP

The final regulations set the criteria that a state's proposal must meet in order for the state to receive approval to incorporate individual student academic progress into its calculation of AYP.

Rationale: *The criteria in the final regulations ensure that schools continue to be held accountable for the achievement of all students, while providing flexibility for states to include a measure of individual student growth in calculating AYP.*

7. Same Subject Identification for Improvement

The final regulations permit a district to identify a school as "in need of improvement" if the school does not meet the annual measurable objective (AMO) in the same subject (or meet the same academic indicator) for two consecutive years. A district may not, however, limit identification for improvement to schools that miss AYP only because they did not meet the AMO in the same subject (or meet the same academic indicator) for the same subgroup for two consecutive years. A similar provision applies to district identification for improvement.

Rationale: *The final regulations codify current Department policy and establish clear parameters for districts and states to use when identifying schools and districts for improvement. Limiting the identification of schools and districts that are "in need of improvement" to those that do not meet the AMO in the same subject for the same subgroup over consecutive years would be inconsistent with NCLB's accountability provisions. The law requires that every subgroup meet the state's AMO in each subject, each year.*

8. Restructuring

The final regulations clarify that:

- Interventions implemented as part of a school's restructuring plan must be significantly more rigorous and comprehensive than the corrective actions that the school implemented after it was identified as in need of improvement, unless the school has begun to implement one of the restructuring options as a corrective action.
- Districts must implement interventions that address the reasons why a school is in the restructuring phase.
- The restructuring option of replacing all or most of the school staff may include replacing the principal; however, replacing the principal alone is not sufficient to constitute restructuring.
- The "other" option to restructure a school's governance may include replacing the principal so long as this change is part of a broader reform effort.

Rationale: *It is important that states and districts take significant reform actions to improve chronically underperforming schools. The final regulations clarify the intent of the statute, which is that restructuring must include a significant change in the governance of a school that has not made AYP for five years.*

9. Timely and Clear Notification to Parents

The final regulations supplement the regulatory provisions regarding notice to parents of the availability of public school choice and SES to require that notice be timely and clear. Districts must:

- Notify parents of eligible children of the option to transfer their child to another public school not identified for improvement and provide details about the available options as far in advance as possible, but no later than 14 days before the start of the school year; and
- Notify parents of eligible children of the availability of SES in a manner that is clear and concise, as well as clearly distinguishable from other school-related information that parents receive.

Rationale: *Early notification to parents of their public school choice options is essential for parents to have time to make an informed decision about whether to transfer their child to another public school. Additionally, it is important that a district's communication to parents about their SES options be as straightforward and easy for parents to understand as possible.*

10. Access to Information on District Implementation of Public School Choice and SES

The final regulations require districts to include on their Web sites the following information in a timely manner in order to ensure that parents have current information on their public school choice and SES options:

- The number of students who were eligible for and who participated in SES and public school choice, beginning with data from the 2007–08 school year and for each subsequent year;
- A list of SES providers approved to serve the district, as well as the locations where services are provided for the current school year; and
- A list of available schools to which students eligible for public school choice may transfer for the current school year.

Rationale: *Requiring districts to post these data on their Web sites will make current information about available Title I public school choice options and SES more widely accessible to parents and other interested parties.*

11. State Responsibilities for SES

The final regulations require each state to:

- Post on its Web site, for each district, the amount of funds the district must spend on choice-related transportation, SES, and parent outreach, and the maximum per-pupil amount available for SES;
- Indicate on its list of approved SES providers those that are able to serve students with disabilities or limited English proficient students; and
- Develop, implement, and publicly report the standards and techniques it uses to monitor how districts implement the SES requirements.

Rationale: *Requiring each state to post on its Web site the funds available to support public school choice, SES, and parent outreach, and identify the providers that can serve students with special needs will provide valuable information for all stakeholders. In addition, requiring each state to report publicly on the criteria it uses to monitor districts' implementation of SES will help ensure that all states set rigorous and clear expectations for their districts, which, in turn, will lead to more effective implementation of SES.*

12. SES Provider Approval Process

The final regulations supplement the requirements for approving applications from potential SES providers by requiring each state to consider:

- Evidence from a provider that its instructional methods and content are aligned with state academic content and student academic achievement standards, and are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children;
- Information from a provider on whether it has been removed from any state's approved provider list;

- Parent recommendations or results from parent surveys, if available, regarding the success of a provider's instructional program in increasing student achievement; and
- Any evaluation results demonstrating that a provider's instructional program has improved student achievement.

Rationale: *The final regulations will help ensure that states use a rigorous approval process that considers all relevant information before they approve entities to serve as SES providers in the state.*

13. State Monitoring of SES Provider Effectiveness

The final regulations require a state, before renewing or withdrawing approval of a provider, to examine, at a minimum, evidence that the provider's instructional program:

- Is consistent with the instruction provided and content used by the district and the state;
- Addresses students' individual needs as described in their SES plans;
- Has contributed to increasing students' academic proficiency; and
- Is aligned with state academic content and student academic achievement standards.

States must also take into account parent recommendations, results from parent surveys, or other evaluation results, if any, regarding the success of a provider's program in increasing student achievement.

Rationale: *The final regulations will help create a more uniform, evidence-based process across states for monitoring SES providers.*

14. Costs for Parent Outreach Related to Public School Choice and SES

Under the statute, districts are required to spend an amount equal to at least 20 percent of their Title I, Part A allocation on choice-related transportation and SES (the "20 percent obligation"). The final regulations permit a district to count a portion of its costs for parent outreach and assistance (up to an amount equal to 0.2 percent of its Title I, Part A allocation) toward meeting its 20 percent obligation.

Rationale: *By permitting districts to count costs of parent outreach and assistance toward meeting their 20 percent obligation, the final regulations encourage districts to provide more parent outreach and other assistance to help parents take advantage of their public school choice and SES options.*

15. Use of Funds for Public School Choice and SES

The final regulations require a district, before it uses unspent funds from its 20 percent obligation for other allowable activities, to:

- Meet, at a minimum, the following criteria:
  - Partner, to the extent practicable, with outside groups to help inform students and parents of the opportunities to transfer to another public school or receive SES.
  - Ensure that students and their parents have had a genuine opportunity to sign up to transfer to another school or to obtain SES by
    - Providing timely, accurate notice to parents;
    - Ensuring that sign-up forms are made widely available and accessible and that they have been distributed directly to all eligible students and their parents; and
    - Providing a minimum of two enrollment "windows," at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting SES and selecting an SES provider.
  - Ensure that SES providers are given access to school facilities on the same terms as are available to other groups that seek to use school facilities.
- Maintain records demonstrating that the district has met these criteria and has notified the state education agency (SEA) that it has met the criteria.
- Inform the SEA of the amount of funds remaining from the 20 percent obligation that it intends to spend on other allowable activities.

The final regulations require that each state:

- Ensure, through its regular monitoring process, that a district that uses unspent funds from its 20 percent obligation for other allowable activities meets the criteria listed above; and

- In addition to regular monitoring, review, by the beginning of the next school year, the activities of any district that spends a significant portion of its 20 percent obligation for other allowable activities and that has been the subject of multiple complaints regarding its implementation of the public school choice and SES requirements.

Rationale: *The final regulations help to ensure that parents of eligible students have a genuine opportunity to transfer their child to another school or to obtain SES before a district may use any unspent funds from its 20 percent obligation for other allowable activities.*

16. Highly Qualified Special Education Teachers

The final regulations clarify that a special education teacher is a "highly qualified teacher" under the ESEA if the teacher meets the requirements for a highly qualified special education teacher under the *Individuals with Disabilities Education Act* (*IDEA*).

Rationale: *The final regulations provide clarification regarding the highly qualified teacher requirements under the ESEA. The final regulations do not change the requirements for highly qualified teachers under the ESEA or the IDEA.*