



# UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

NOV 19 2007

Dear Chief State School Officer:

Thank you for your hard work over the last seven years since the enactment of the *No Child Left Behind Act (NCLB)*. The efforts you have put forth to help realize the goals of NCLB have led to real and meaningful improvements in student achievement. Also, thank you for meeting with me at your CCSSO Annual Policy Forum. It was an honest and productive exchange. As a result of our time together, I hope to work with Gene Wilhoit and other leaders to discuss the issues you raised and develop steps for moving forward.

The 2007–08 school year will be an exciting one for several reasons. States will introduce their new science assessments, Congress will continue working to reauthorize NCLB, which will likely result in some changes to the law, and the Department and States will continue to implement two new regulations—the September 2006 regulations on assessment and accountability for recently arrived and former limited English proficient (LEP) students (<http://www.ed.gov/news/pressreleases/2006/09/09132006a.html>) and the April 2007 regulations on modified academic achievement standards for certain students with disabilities (<http://www.ed.gov/policy/speced/guid/modachieve-summary.html>). The Department believes that these regulations will help States progress toward the goal of 100 percent proficiency by 2013–14. Both regulations will have implications for States' accountability plans. Accordingly, I write regarding the process through which States will be able to amend their Title I accountability workbooks for this school year.

## **Amendments to Accountability Workbooks in Light of Reauthorization**

As you know, the Department permits States to revise their accountability plans to reflect changes in their strategies and programs for improving student achievement. Prior to implementing any revisions, a State must submit its proposed amendments to the Department for review and approval. This year, States may once again submit revisions. Given the uncertainty surrounding Congress' reauthorization of NCLB, I encourage you to consider the following when proposing amendments:

- Given that the Congress is actively working through the reauthorization process, we would not expect to receive major amendments to States' accountability plans at this time. Therefore, we strongly encourage you to submit only amendments that are either (1) necessary to bring your State's accountability workbook into compliance with current law, or (2) required to accurately reflect current practice in your State's accountability system.
- Each State's accountability workbook posted on the Department's Website should make the State's accountability system transparent to all stakeholders and the public. Therefore, I encourage you to review and, if necessary, amend your State's workbook to ensure that it accurately reflects actual practice in your State, particularly as follows:
  - Explain, in Section 6.1 of your State's workbook, your procedures for implementation of your State's science assessment during the 2007–08 school year, even though States are not

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required to count the results on science assessments in making adequate yearly progress (AYP) determinations;

- Provide a correct accounting of your State's AYP calculations, including, for example, your State's annual measurable objectives (AMOs) and whether and how your State: averages data across years; uses multiple test administrations (*See Part B of the Department's guidance on Additional Title I Provisions Included in the Regulations Package on Modified Academic Achievement Standards* at <http://www.ed.gov/policy/elsec/guid/040907-regs.doc>); applies a growth model; or uses a performance index;
- Explain any changes resulting from your State's implementation of the LEP regulations, including whether your State exempts recently arrived LEP students from one administration of the reading/language arts assessment during those students' first 12 months attending schools in the United States and whether your State includes formerly LEP students within the LEP subgroup in making AYP determinations for up to two years after the students no longer meet the State's definition for LEP; and
- Describe any changes resulting from your State's implementation of the regulations on modified academic achievement standards, including whether your State includes the scores of students who were formerly categorized as students with disabilities in AYP calculations for the students with disabilities subgroup. (*See Part C of the Department's guidance on Additional Title I Provisions Included in the Regulations Package on Modified Academic Achievement Standards.*)

### **Amendments that Establish a Uniform Minimum Group Size**

The Title I regulations issued on April 9, 2007 require all States to establish, in time to affect AYP decisions based on assessments administered in the 2007–08 school year, uniform minimum group size for all student groups. (*See 34 C.F.R. § 200.7(a)(2)(ii) and Part A of the Department's guidance on Additional Title I Provisions Included in the Regulations Package on Modified Academic Achievement Standards.*) If your State does not have a uniform minimum group size (including for the "all students" group), you must amend your workbook to comply with the regulations. Please know that the Department will look carefully at any proposals that increase the overall minimum group size and will require data proving that no student subgroups experience a significant adverse impact as a result of the change. (*See Questions A-1 and A-2, in particular, in the Department's guidance on Additional Title I Provisions Included in the Regulations Package on Modified Academic Achievement Standards.*)

### **Implementing the Regulations on Modified Academic Achievement Standards**

The regulations issued on April 9 allow States to develop modified academic achievement standards for certain students with disabilities and to use these standards to make AYP decisions. For detailed information on the implementation of the modified academic achievement standards and the alternate assessments based on these standards, please consult the regulations at <http://www.ed.gov/legislation/FedRegister/finrule/2007-2/040907a.html>, and the Department's guidance at <http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc>.

The Department is aware that the regulations on modified academic achievement standards are still very new, and your State may not have had sufficient time to develop modified academic achievement standards or to implement approved alternate assessments. Therefore, consistent with 34 C.F.R. §

200.20(g), the Department is offering transition flexibility. In order to be approved to implement this flexibility in 2007–08, your State must meet the eligibility requirements described in the enclosed document, which include demonstrating that the State is moving expeditiously to adopt and administer alternate assessments based on modified academic achievement standards. If your State is interested in applying for this transition flexibility in the 2007–08 school year, you must submit an amendment to your accountability plan providing recent data in support of the request, even if you were previously approved to implement interim flexibility. If your State has already developed an alternate assessment based on modified academic achievement standards, you should submit evidence this winter of the development of the assessment, consistent with our peer review guidance (*Forthcoming*). A State must receive approval by the Department of its alternate assessment based on modified academic achievement standards before scores from that assessment may be included in AYP determinations. If you are submitting evidence prior to the first administration of your State’s alternate assessment based on modified academic achievement standards, you should consult item #3 in the enclosed document, which describes the types of evidence we expect a State to submit for peer review before its alternate assessment may be used for AYP determinations.

Amendments for the 2007-08 school year are due to the Department no later than February 15, 2008. The February 15 deadline will enable the Department to make timely decisions and allow States to meet their timelines for accountability determinations while adhering to the requirement that States not make accountability determinations using a plan that is not fully approved.

Once again, I would like to commend you for the work you have done on behalf of our nation’s students. The Department looks forward to continuing to work closely with you and your colleagues as we face the challenges of reauthorization and the implementation of the new regulations on LEP students and modified academic achievement standards. Please contact Patrick Rooney ([Patrick.Rooney@ed.gov](mailto:Patrick.Rooney@ed.gov) or 202-205-8831) of my staff if you have any questions or concerns.

Sincerely,



Kerri L. Briggs, Ph.D.

Enclosure

cc: Governors  
State Accountability/Assessment/Title I directors

## **ATTACHMENT: Eligibility for Transition Flexibility in the 2007–08 School Year**

To give States sufficient time to develop modified academic achievement standards and to implement approved alternate assessments, the Department has developed, consistent with 34 CFR § 200.20(g), transition flexibility for the 2007–08 and 2008–09 school years. States wishing to take advantage of this flexibility may choose either of the following two options:

- **Option 1.** States may make a mathematical adjustment to the proficiency rate for the students with disabilities subgroup in schools or districts that failed to make AYP based solely on the scores of students in that subgroup.
- **Option 3.** States may offer their own ideas for the Secretary’s consideration.

For the details of these options, please consult the Department’s original letter describing the flexibility at <http://www.ed.gov/policy/speced/guid/secletter/051214a.html>. Please note that Option 2 described in that letter, which permitted States to assess students on unapproved modified academic achievement standards, is no longer available to States now that final regulations regarding those standards are in effect. Instead, States must now submit their modified academic achievement standards and the alternate assessments based on those standards for peer review and receive Department approval before including them in AYP determinations.

### **Eligibility for Flexibility**

The Secretary will make determinations about a State’s eligibility for transition flexibility on a year-by-year basis. To qualify for the flexibility in 2007–08, a State must:

1. **Meet the following eligibility requirements:**
  - **95 percent participation rate for students with disabilities.** Statewide assessment participation rates for students with disabilities, for purposes of measuring AYP, must be at or above 95 percent.
  - **Compliance with IDEA.** States with IDEA Special Conditions may not be eligible if such conditions cannot be resolved by July 1, 2008.
  - **Appropriate accommodations.** Appropriate accommodations must be available for students with disabilities.
  - **Improving student achievement.** Each State must provide information on actions it has taken to raise achievement for students with disabilities or narrow the achievement gap and evidence that such efforts are improving student achievement.
2. **Have an approved assessment system.** The status of the State’s assessment system must be Full Approval, Full Approval with Recommendations, or Approval Expected.
3. **Show evidence of substantial progress** in developing an alternate assessment based on modified academic achievement standards. This evidence must include:
  - A description of the progress the State has made to date in developing the assessment;
  - Test blueprints or item development in preparation of the field trial, or evidence of the field trial or operational trial;

- A timeline that shows how the State will work to complete the alternate assessment and ensure effective implementation (e.g., IEP Team guidelines, standards-based IEP goals, training for IEP Teams); and
- A Request for Proposals (RFP), contract, or evidence of funds spent or to be spent on developing an alternate assessment aligned to modified academic achievement standards.