

DEPARTMENT OF EDUCATION**34 CFR Part 200****RIN 1810—AA95****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 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 would clarify statutory provisions regarding State, LEA, and school accountability for the academic achievement of students with the most significant cognitive disabilities and are needed to implement 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 May 19, 2003.

ADDRESSES: Address all comments about these proposed regulations 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 is (202) 260-7764.

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

You must include the term “proposed rule” in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Jackson, Ed.D., Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, Telephone: (202) 260-0826.

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. We are specifically interested in your comments on the following:

(1) Whether, in proposed § 200.13(c)(1), existing scientific research, State/LEA or national data, and the current state of knowledge support setting the cap at 1.0 percent for students with the most significant cognitive disabilities whose achievement can be measured against alternate achievement standards for determining adequate yearly progress (AYP) at the LEA and State levels.

(2) What, if any, significant implementation issues pertaining to the definition of “students with the most significant cognitive disabilities” in proposed § 200.1(d)(2) would arise at the State, LEA, and school levels. Specifically, the Department requests comments on what current recordkeeping and reporting requirements would States and LEAs use to comply with this provision and whether additional information or data will be necessary for compliance.

(3) Compliance with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

(4) How the Department should review these regulations once finalized to monitor regulatory compliance and invite more research and analysis to potentially fine-tune program implementation.

In addition, we invite you to submit additional comments on § 200.20(c)(3) of the Title I regulations published on December 2, 2002 (67 FR 71710, 71717). This regulation provides that, if a student takes a State assessment for a particular subject or grade level more than once, the State must use the student’s results from the first administration to determine AYP. We included this provision in the regulations in response to comments requesting clarification on the proposed regulations. Although there may be very sound reasons for permitting a student to take high-stakes assessments multiple

times, we believe that a student’s performance on the first administration best reflects the performance of the school in preparing the student to take the assessment, and school accountability is the focus of Title I. Several States have suggested that their practice of administering multiple assessments in certain situations and counting the scores on these assessments for school accountability purposes better reflects both student and school performance than does § 200.20(c)(3). We invite you to comment on whether § 200.20(c)(3) should be amended and, if so, how.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3W242, 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

These proposed regulations implement statutory provisions regarding State, LEA, and school accountability for the academic achievement of students with the most significant cognitive disabilities. They would amend final regulations published in the **Federal Register** (67 FR 45038) by the Secretary on July 5, 2002 for the standards and assessment provisions of Title I, part A of the ESEA and on December 2, 2002 (67 FR 71710) for the remaining provisions of Title I, parts A and C. These regulations implement the ESEA as reauthorized under the NCLB Act (Pub. L. 107-110), enacted January 8, 2002, which incorporated major educational reforms proposed by President George W. Bush in his No Child Left Behind initiative and significant changes to Title I of the ESEA, which is designed to help disadvantaged children meet high academic standards.

In the notice of proposed rulemaking (NPRM) published in the **Federal Register** (67 FR 50986) on August 6, 2002, the Secretary proposed in § 200.13