

**Council of Chief State School Officers**

**Comments on Proposed Title I Proposed Regulations**

Proposed § 200.19(a); NGA Graduation Rates

As indicated in the cover letter, the Council of Chief State School Officers (CCSSO) supports codification of the National Governors Association (NGA) graduation rate definition and commends the U.S. Department of Education (USED) for acknowledging and following leadership of the states on this issue.

We also support provisions in the proposed regulations that define a "regular high school diploma" as including the standard high school diploma or a higher diploma and agree with the intent of the proposed regulations to ensure the integrity of the graduation rate. At the same time, we want to make it clear that states need to have latitude to address in a reasonable and efficient manner some of the practical issues that will arise in applying the NGA rate definition. For example, in determining the graduation rate, states should have latitude to address how to treat students who transfer from a public school to a private school, many of whom should not be deemed drop-outs even though the educational program and diploma are not aligned with the state's academic content standards.

Proposed § 200.19(a)(3)(C); Proposed Alternate Number of Years to Graduate for Certain Students

The proposed regulations provide that a state may propose, for approval by the Secretary of Education, an alternate definition of the standard number of years to graduate in calculating the graduation rate for limited categories of students who may take a longer time to graduate "under certain conditions." CCSSO supports the intent of these provisions and the absence of prescriptive criteria for approving an alternate definition. If these provisions are retained in the final regulations, it is vital that the Secretary be open to a variety of approaches by the states and not, in effect, employ unpublished and prescriptive standards for approving alternate definitions. However, CCSSO is very concerned about pre-identifying certain groups of students as being expected to require more time to graduate and the signal that sends to the students, their parents, teachers, and the public.

CCSSO is particularly interested in consideration of a different approach to this issue. That approach, as reflected in bills that would amend the No Child Left Behind Act (NCLB), would provide for combined 4-year and extended (5-year or beyond) cohort rates, with both 4-year and extended graduation rates reported and ultimately used for accountability purposes. High schools are serving higher percentages of nontraditional students with challenges in language acquisition, economic circumstances, and learning challenges that have the effect of extending the period for graduation beyond four years. Schools should receive AYP credit for each student who does in

fact graduate, even if the student requires more than 4 years to graduate. Providing for multiple cohort graduation rates may help to achieve greater national uniformity in graduation rates, consistent with NGA recommendations, serve to ensure that there are incentives to graduate students who may still be enrolled in school beyond a four-year period, and avoid labeling particular groups of students with lower graduation expectations.

Proposed § 200.19(a)(1)(ii); Transitional Graduation Rates—“Averaged Freshman Graduation Rate” (AFGR)

CCSSO supports giving states several years of lead time to implement the NGA definition, given that some states now lack the data capacity to implement it. However, requiring the states to adopt a new transitional rate, and then to adopt the NGA rate, multiplies the technical, administrative, and financial burdens of revising state systems for computing graduation rates. Initiating new student-level data collections to generate the necessary transitional data would in itself constitute a significant, time-consuming burden. Indeed, with reauthorization of the ESEA looming, the practical impact may be to require states to revise their graduation rate definition three times in a period of 4 to 5 years. Multiple changes in graduation rates also will breed public and parental confusion and mistrust of these numbers. There is no significant benefit to requiring adoption of the AFGR on a transitional basis that outweighs these problems, particularly given the inaccuracies in the AFGR.

All of the states are committed to adoption of the NGA graduation rate definition, and it is likely that most states will have the data capacity to implement it prior to the 2012-13 school year. Accordingly, USED should consider a different approach to this issue that would generally require implementation of the NGA definition earlier than 2012-13, provided that those states that show they do not have the technical data capacity to implement it are given the additional time they need to do so.

Proposed § 200.19(d); Graduation Goals and Improvement for AYP

The proposal to require states to adopt graduation goals and definitions of continuous and substantial improvement toward those goals in 2008-09 and to require all high schools and local educational agencies (LEAs) to meet or exceed these goals or definitions for the 2008-09 school year may significantly impact the numbers of high schools and LEAs subject to interventions. We believe that making this change in isolation under the current NCLB accountability process, without addressing the overall accountability system and how it should function to yield the most valid and useful decisions about schools and LEAs, is not the appropriate way to proceed. This issue requires fuller analysis and conversations and should be the subject of a legislative proposal that will permit, for example, addressing how AYP indicators might be combined to make the most valid and useful determinations and the appropriate use of differentiated accountability to ensure that the accountability system properly targets schools and LEAs for interventions. We believe it would not be appropriate for USED to proceed with this proposal without a fuller analysis and discussion in partnership with the states respecting these broader issues. USED should withdraw this regulatory proposal and pursue these discussions with the goal of making changes in a reauthorization bill.

Let us be clear: CCSSO agrees that it is appropriate to raise the accountability bar for the success of high schools in graduating their students and to use other objective outcome measures of student performance in holding schools and LEAs accountable. What we oppose is forcing an increasing proportion of our schools into the current, one-size-fits-all accountability scheme that does not make sense given the variety of challenges and resources in our schools and educational agencies.

If, despite these strong concerns, USED were to move forward with this regulatory proposal, these provisions would need to be coupled with the opportunity for every state to develop and use a differentiated accountability system that permits the state and LEA to use appropriate interventions and supports tailored to the needs of schools that must improve their graduation rates. While we commend USED for its current pilot initiative on differentiated accountability, it would be vital to expand the opportunities in that pilot to all the states if this proposed regulation were adopted.

We note also that the proposed timing for implementation of these proposed provisions is legally problematic, given that final regulations will not be issued in advance of the 2008-09 school year. Perhaps even more importantly, this timeline is clearly unrealistic given the time needed to develop and secure stakeholder buy-in for fundamental policy changes in this area; obtain expert assistance in developing the policies; have the policies reviewed and approved by USED under new leadership; and implement the policies. It is fundamentally unfair and self-defeating to impose new standards on schools and LEAs, in whole or in part retroactively, without giving them an adequate opportunity to plan for them and make appropriate changes in programs.

Subject to the overarching comments above, CCSSO supports the lack of prescriptive standards for the Secretary's approval function. That support is subject to the understanding that the Secretary will not impose unpublished and rigid standards in approving goals and definitions of progress; that a transparent peer review process will be used in the approval process; and that opportunities will be provided for a variety of approaches, including, for example, goals that increase over time, definitions of progress that reflect an averaging model, and other approaches. USED also needs to understand that graduation rates in any one year reflect the cumulative effect of four or more years of work with individual students. Research data do not support the establishment of annual improvement targets for graduation that are as aggressive as annual measurable objectives for assessments that generally measure a year's work.

#### Proposed § 200.19(e); Disaggregation of Graduation Rates

CCSSO supports disaggregation of graduation rates for AYP purposes in principle, and we support deferring such disaggregation at the school level until the NGA graduation rate is implemented, consistent with the proposed regulations, so that states may plan for and appropriately implement disaggregation in making AYP determinations. Disaggregation is key to ensure that we hold high schools and LEAs accountable for their performance in graduating poor and minority students, as well as other subgroups covered in the law. Our concern with these proposed regulations is not with disaggregation per se, but rather with how it is implemented, from the standpoint of timing and impact on the overall accountability system. Disaggregation in particular greatly increases for high schools the numbers of AYP indicator cells, each of which

can operate by itself to cause a school or LEA to miss AYP, and underscores the prior recommendation that these issues need to be addressed in legislation, not regulations, with reference to the overall structure, validity, and impact of the accountability system.

#### Proposed § 200.20(h); Growth Models

As you know, CCSSO supports the opportunity for states to use growth models of accountability and worked closely with USED in developing this opportunity. We support the codification of this opportunity, subject to one caveat. As we see it, Section 9401 of the ESEA, the legal basis for approving growth models and other forms of flexibility, should serve the purpose of accommodating and supporting innovation by the states through waivers of statutory or regulatory requirements. It would undercut that statutory purpose for the Secretary through regulations to constrain the authority to grant flexibility under Section 9401. Indeed, we believe these regulations, which purport to implement that authority, may be waived under the statutory standards. We support inclusion in the regulations of the seven core criteria for approving growth models, without including other prescriptive policies used in the growth model pilot, so long as it is understood that these criteria do not constrain the Secretary's continuing authority to approve applications for flexibility under Section 9401, including growth model applications, if they meet the statutory criteria in Section 9401.

#### Proposed § 200.7(a)(2); Accountability Workbooks

CCSSO supports the underlying intent of these provisions to ensure that states set appropriate minimum N size and confidence intervals for the purpose of ensuring that AYP determinations about subgroups of students are based on statistically reliable data, keeping in mind the purpose to measure sub-group performance for accountability purposes. We believe that states generally meet that standard. That has been implicitly recognized through the USED review and approval process. Both states and USED may learn more about these issues over time, including possible analysis of this issue by USED's National Technical Advisory Committee.

CCSSO's strong recommendation is that USED require further justification from states for their minimum N size or confidence interval on a case-by-case basis if the state proposes or uses policies that are outside the customary ranges that have been used by the states, with USED approval. We oppose proposed provisions that require universal submission of new accountability workbooks on these issues by every state within six months after the regulations take effect. This is an unnecessary exercise that imposes significant planning, administrative, and paperwork burdens on all of the states. Instead, the USED should follow up administratively on a case-by-case basis with individual states outside the customary ranges. Requiring resubmissions by all the states raises the troubling inference that USED is planning to apply new, more rigid standards in these areas without publishing them as proposed regulations. At a bare minimum, any requirement to submit new accountability workbooks should apply with regard to policies and procedures to be used beginning in 2009-10, not in 2008-09. The policies need to be prospective, and states should not be required to rush through this exercise for the 2008-09 school year of testing and resulting accountability determinations.

One other important communications issue needs to be stressed on the issue of minimum N size and confidence intervals. Some of the press have written inaccurate and irresponsible articles suggesting that minimum N size and confidence intervals result in exclusions of students from the accountability system, fueling misperception among the public as to the purpose and effect of these provisions. In fact, none of these policies excludes any students from the accountability system. Every child in every school is subject to assessments and is counted in determining the school's and LEA's AYP. NCLB, by requiring statistical validity and protection of student privacy in subgroup accountability, in fact contemplates that not every student will be counted in multiple subgroups for AYP purposes. States, with USED approval, have been wrestling with the proper balance to maximize counting of students in each subgroup and to ensure validity. This is not about excluding students from the accountability system, and USED should work to address this misperception.

#### Proposed § 200.11(c); Reporting NAEP Scores on Report Cards

CCSSO is committed to playing a leadership role in efforts to raise educational standards and promote standards-based education reform on a nation-wide basis. We would welcome a dialogue with USED about how NAEP might further contribute to public understanding and support for standards-based reform. However, we do not believe this regulatory proposal to conflate NAEP performance with performance on state assessments is the way to do that. First, the provision exceeds USED's statutory authority. The ESEA prescribes in considerable detail what must be included in state and local report cards, as well as what may be included. NAEP results are not among these requirements, nor is it even among the listed permissive elements. If a state or LEA issues a report card that includes the information mandated in the ESEA, it is in compliance with the law. USED lacks authority to add to these requirements.

Moreover, including NAEP results on state and local report cards will inevitably breed significant confusion among parents and the public. NAEP, as you know, is administered for different purposes, using fundamentally different testing methodologies, including different accommodations from state accountability assessments; measures different constructs; and is a norm-referenced test not aligned to state standards. Perhaps most significantly, NCLB and NAEP include different federal definitions of "proficiency," which NAEP defines as achieving high levels of mastery over challenging subject matter. And it is particularly inappropriate and confusing to include state NAEP results on LEA report cards.

#### Proposed § 200.22; National Technical Advisory Council

Review of state educational performance and reform presents complex and difficult educational and technical judgments. Any technical expertise that can help improve those judgments is a plus, and to that end CCSSO supports creation of the National Technical Advisory Council (TAC). However, we need to stress that there should be no implication in establishing a national TAC that every issue in this area calls for a single national answer. On the contrary, the TAC must be sensitive to state authority and the need to permit latitude for states to develop their own innovative approaches to standards, assessments, and accountability systems. Also, in using the TAC, USED needs to be sensitive to its obligation for transparency in addressing these issues and reviewing state plans. It is also important that the TAC include experts who have experience

and knowledge in the practical challenges that states, including states with limited resources, face in implementing assessment and accountability systems. These issues are highly technical, but they are not academic; they must be addressed and implemented in the real world.

#### Proposed §§ 200.32; 200.50(d) Identification for School/LEA Improvement

CCSSO recognizes that these provisions incorporate current USED policies on the identification of schools and LEAs for improvement. However, we continue to maintain that these policies are overly rigid and not required by the NCLB. States need more discretion in determining which schools require intervention and in targeting state and local resources where they are most needed. Codifying these policies that interventions are required, even where there is no subgroup in a school or LEA that fails to make AYP for two consecutive years, is an unnecessary overreach by USED.

#### Proposed §200.37; Notice of Identification

CCSSO understands the desirability of providing early notice to parents, at least 14 days before the start of the school year, of the opportunities for exercising school choice. However, it is simply not possible to meet that timeline in many states and circumstances. A number of states have year-round schooling and rolling enrollment dates, not a single start date. A single date or a standard that presumes a single enrollment date for the year simply is not workable in those states. Furthermore, many states that administer their assessments in the spring are subject to long-term contracts with assessment vendors that do not provide assessment results in time to make AYP determinations and provide notices of choice options two weeks in advance of the school year. At the least, some transition period or reasonable accommodation needs to be provided in these situations.

USED's legal authority to impose this requirement is also open to question. Section 1116(a)(6) of ESEA simply requires that LEAs "promptly provide" the notice to parents, a subjective standard, subject only to the statutory requirement that the opportunity to transfer be afforded no later than the first day of the school year. The statutory language, "promptly provide," we submit, implies an obligation measured in light of the circumstances, against the time when, as a practical matter, the state can provide the information on assessment results, the identifications can be made, and the choice options identified. It does not appear to contemplate or support a precise national standard as included in the proposed regulations. To date, USED's enforcement policy has been reasonable in recognizing that these provisions require balanced judgments. That approach should not be changed.

#### Proposed § 200.39(c); 200.44(a); 200.47(a)&(c); 200.48(d); Choice and SES

Several of the proposed new requirements concerning public information on choice and SES are unobjectionable. We support allowing LEAs to count towards the choice and SES required earmark, funds expended to inform parents of and recruit students for these opportunities. However, the limitation of the amount that may be counted to 0.2% is overly rigid and may result in burdensome and costly accounting to track these funds which in some cases may exceed the amount that may be counted. We recommend that LEAs be permitted to count reasonable

expenditures for these purposes, which, as the proposed regulations acknowledge, are properly counted against the earmark, without a rigid cap.

Also, the proposed minimum criteria for state monitoring of SES providers are costly and impractical. In particular, proposed § 200.47(c) appears to require the SEA to examine each provider's instructional program for consistency with the instructional content used by each LEA and with the individual needs addressed in each student's SES plan. There are potentially hundreds of LEAs and thousands of students participating in SES in each state, which makes these requirements plainly unworkable.

We also have serious concerns with proposed provisions that would require carry-over of funds earmarked for public school choice transportation and SES unless a state reviews and approves a request by the LEA, based on its compliance with three tests in the proposed regulations. We strongly recommend that the carry-over provision apply only when monitoring by the state or USED shows substantive compliance problems in administering the choice and SES provisions by the LEA.

- The basic approach taken in these provisions is objectionable. It assumes bad faith implementation if the full earmark has not been spent. In effect, it requires every LEA in the nation to prove lack of bad faith if it does not spend the full earmark for choice and SES. In fact, large numbers of districts may never reach the 20% earmark due to size, location, number of SES providers, or a range of factors that have nothing to do with lack of effort in implementing SES. The requirement to document compliance by every LEA in the nation is extraordinarily wasteful and an unwarranted, sweeping, and distrustful approach to monitoring.
- Requiring advance approval by the state further imposes a significant, unnecessary burden on the state. The time required to make and review these submissions may disrupt program implementation. Any standards that invoke carry-over should be subject to state monitoring, not to advance approval by the state.
- The carry-over provision may in some instances cause conflicts with the 15% limit on carry-over under section 1127 of ESEA. (And carry-over may only compound the problem of reserving funds for non-existent needs in the following year.) It is not an answer to this problem that state and local funds may be used and carried over to meet the SES and choice earmarks, since a requirement that in effect requires carry-over of state and local funds for that purpose would violate the unfunded mandates provision in section 9527(a) of ESEA.
- Provisions for equitable access of SES providers to school facilities need to be clarified so that such access is not measured against use of school facilities by the school or LEA itself, directly or through contractors, for after-school activities or use by other public agencies for social, recreational, or other public services.

#### Proposed §200.43; Restructuring

CCSSO supports rigorous and educationally sound interventions for schools that persistently fail to make AYP. States need to have the responsibility and authority to ensure that LEAs adopt meaningful interventions for these schools. As reflected in our other comments, we believe there

is an essential need for state and LEA discretion in planning and implementing differentiated consequences, consistent with the needs and resources of each school. The imposition of further bright-line federal rules on what interventions are required on a nation-wide basis is not productive.

In particular, the proposed rule that restructuring interventions must be significantly more rigorous and comprehensive than corrective actions implemented for the school could require LEAs to abandon corrective actions that are beginning to have a positive effect on school performance, as shown in student performance on state assessments, even though there has been inadequate time for the corrective action to fully take hold and the school has yet to make AYP. (Considerable research suggests that several years of intensive efforts may be needed to turn a school around.) Also, USED has no appropriate basis for imposing a federal rule for every school in the nation that is in restructuring status that replacing the school principal is insufficient. Indeed, that proposed rule is inconsistent with some research on restructuring indicating that it is generally more effective to replace the school principal with a new school turn-around leader than it is to replace large numbers of school staff. As implicitly recognized by USED's own Differentiated Accountability Pilot, there is a need for more discretion in the states to shape school interventions that make sense in the context of each school. This proposed regulation is at odds with that need.

#### Proposed § 200.56; Definition of Highly Qualified Teachers

This section would cross-reference the definition of highly qualified special education teachers in regulations under the Individuals with Disabilities Education Act (IDEA). The preamble to the proposed regulations indicates that this change was made to align the Title I ESEA and IDEA regulations because the current Title I regulations do not define the requirements for highly qualified special education teachers who do not teach core academic subjects. CCSSO has no problem with the referenced definitions. However, as a matter of law, these requirements may be applied and enforced by USED only under IDEA, not under Title I or Title I regulations.

#### Costs

The preamble to the proposed regulations significantly underestimates the costs of implementing the proposed regulations for both states and LEAs. In large part, that reflects the preamble's failure to reflect the time and effort needed (1) with state governance groups, educators, and other stakeholders in developing new policies; (2) in developing and providing new guidance and training for SEA and LEA staff who must administer the requirements; (3) in revising data systems to meet new data requirements; and (4) in monitoring compliance with new requirements, as well as data accuracy. Implementation of our substantive recommendations above (on issues such as new accountability workbooks; far-reaching monitoring obligations on the states related to SES and choice; revisions to state and local report cards; and requirements to develop and implement AYP measures of progress for graduation rates in advance of NCLB reauthorization) would both reduce unnecessary costs and burdens and increase the potential benefits resulting from these proposed regulations, consistent with the goals and proper administration of the NCLB. More broadly, these new and expanded state responsibilities illustrate the need to promote state capacity, particularly in the context of ESEA reauthorization.