



**COUNCIL OF CHIEF STATE SCHOOL OFFICERS**  
One Massachusetts Avenue NW • Suite 700 • Washington, DC 20001-1431  
Phone (202) 336-7000 • Fax (202) 408-8072  
[www.ccsso.org](http://www.ccsso.org)

June 23, 2008

Mr. Zollie Stevenson, Jr., Director  
Office of Student Achievement and School Accountability  
U.S. Department of Education  
400 Maryland Avenue, S.W., Room 3W230  
Washington, D.C. 20202-6132

Docket ID ED-2008-OESE-0003

Dear Mr. Stevenson:

This letter is to provide comments in response to the proposed regulations published April 23, 2008, by the U.S. Department of Education (USED) under Title I of the Elementary and Secondary Education Act (ESEA). More specific comments are included in an enclosure with this letter, but we would like first to highlight below the principles that frame our specific responses to USED's proposal.

To be candid, responding to these proposed regulations creates a challenge for the Council of Chief State School Officers (CCSSO). On behalf of chief state school officers throughout the country, and along with many of our partner organizations, we strongly support efforts to foster more transparent, meaningful, and rigorous education accountability measures for states, local educational agencies (LEAs), and schools. As you know, we are committed to developing a new state-federal partnership to tackle together nation-wide education issues through innovation and to raise the bar for student achievement and for closing achievement gaps. We commend the recent steps that USED has taken to work with the states on issues such as growth models and differentiated accountability. Further, we do not want to put the brakes on efforts to improve accountability policies.

In particular, we support in principle several of the provisions in the proposed regulations that are designed to put more emphasis on the importance of high school graduation in evaluating the performance of high schools and LEAs. We specifically support codification of the National Governors Association (NGA) compact on high school graduation rates. This state-led effort to adopt a uniform and appropriate definition of graduation rates reflects state leadership on a central issue of accountability. We are pleased that USED has acknowledged and supported that lead.

At the same time, it is our judgment that some of these regulatory proposals will have unintended negative consequences for states and LEAs charged with implementing the law, and ultimately for schools and students. Several of our specific concerns derive from the issuance of regulations – in the closing months of the Bush Administration – that would add specific, far-reaching requirements under current law rather than addressing these issues as part of a comprehensive review and balanced recalibration of federal accountability policies in the No Child Left Behind Act. In a nutshell, states,

LEAs, and schools need continuity in the federal requirements and policies that constrain them, particularly in the area of standards and accountability. Subjecting states to fundamental changes in federal requirements and policies on the eve of ESEA reauthorization and Executive Branch transition, which likely will result in further policy changes, could be disruptive, result in piecemeal approaches, impose financial and administrative burdens on our educational systems, and breed public misunderstanding of state accountability systems. It is vital that in going forward with these regulations, USED do so in a manner that avoids or mitigates these possible effects.

In response to the proposed regulations, and consistent with the above-stated concerns, we raise the following overarching comments that are foundational for each of the more specific comments in the enclosure, and ask that these overarching comments be addressed directly by USED as part of the rulemaking process:

- First, states and LEAs need appropriate lead time to implement significant changes in accountability requirements. The proposed regulations appropriately provide lead-time for states to fully implement the NGA graduation rate and to use disaggregated subgroup graduation rates in making AYP-status determinations. However, in addition to being a matter appropriate for legislation, the proposed 2008-09 school year timeline for implementing new AYP goals and improvement measures for graduation rates does not provide adequate lead time for fundamental changes in state accountability systems. If final regulations are published this fall, or perhaps as late as January 2009, given the time needed for states to prepare new policies, and for new USED leadership to review, comment, and ultimately approve these policies, it is unlikely that these policies can be adopted until the end of the 2008-09 school year. As a matter of fairness and educational effectiveness, schools and LEAs should not be held accountable under new standards issued well into a school year. The proposed timeline also is legally problematic because the final regulations would not even have taken effect until well into school year 2008-09. In sum, these requirements should apply no earlier than the 2009-10 school year.
- Second, any new accountability requirements need to avoid unnecessary burdens and costs on states and local educational agencies. Significant provisions in the proposed regulations do not meet this principle. According to feedback that we have received from a number of states, costs and administrative burdens addressed in the preamble to the proposed regulations are significantly underestimated. For example, with regard to transitional graduation rates, it is unnecessary and counter-productive to require states that are unable to implement the NGA graduation rate definition immediately adopt a transitional rate – the “Averaged Freshman Graduation Rate” (AFGR). The proposed regulations, in effect, would require states to have three different graduation rate definitions within 5 years, and that may well increase to four definitions in that same timeframe if the reauthorization law changes the definition. As the preamble to the proposed regulations acknowledges, particularly at the school level, use of the AFGR likely will not result in valid and reliable calculations. There is thus little benefit in forcing states to change to a transitional rate, and certainly nothing that would offset the disruption, burdens, costs, and confusion that would be caused by requiring these multiple changes.

Further, with regard to new accountability workbooks, requiring every state to resubmit their accountability workbooks with significant new justifications and data, at the very time of ESEA reauthorization and USED transition, creates substantial and unnecessary financial and

administrative burdens on the states. Under the law, states should only have to revise their workbooks or applications if they propose substantive changes to their accountability system. And states should not be required to rejustify minimum “n” sizes and confidence intervals that come within customary rates used by the states and approved by USED.

- Third, the right balance needs to be made between regulatory initiatives to interpret and apply current law and legislative initiatives designed to effect fundamental changes in accountability. Specifically, proposed provisions that would require adoption and implementation of new high school graduation goals and annual measures of improvement – by adding significant additional performance cells that may be missed by a school or LEA – would effect a fundamental shift in the balance of factors for identifying schools and LEAs for interventions. While we agree with the general direction proposed, how to adopt these additional measures within the broader accountability framework in a manner that is workable and valid presents complicated issues that should be a principal focus of the reauthorization process, not addressed in isolation. Issuing a regulation that simply adds these measures under the current one-size-fits-all NCLB accountability scheme without more fully considering these broader implications, including the likely impact on required interventions and state and local capacity to effect them, is not the appropriate way to proceed. USED should withdraw these provisions and submit them instead as a legislative proposal for reauthorization.
- Fourth, particularly now, with accountability systems in place in all the states, it is critical to effecting standards-based reform that USED provide latitude to states to adopt policies that meet state needs, and that are innovative. In several areas (e.g., AYP graduation goals and improvement; alternate graduation rates for limited groups of students), the proposed regulations provide for key issues to be decided by the state, subject to approval by the Secretary, without specifying particular criteria for approval. We support that approach, subject to the understanding that the Secretary will exercise approval authority—(1) sensitive to the discretion that states must have in setting these policies; (2) in a manner that is transparent and relies on a peer review process that is framed with the goal of supporting state innovation; and (3) without, in effect, applying unpublished, rigid standards.

Thank you for considering these comments.

Sincerely,



Gene Wilhoit  
Executive Director

Cc: Secretary Margaret Spellings  
Deputy Secretary Ray Simon  
Assistant Secretary Kerri Briggs  
Representatives George Miller and Howard “Buck” McKeon  
Senators Edward “Ted” Kennedy and Michael Enzi

Enclosure