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State Fiscal Stabilization Fund Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

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State Fiscal Stabilization Fund Program

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.394 (Education Stabilization Fund) and 84.397 (Government Services Fund)

AGENCY: Department of Education.

ACTION: Final requirements, definitions, and approval criteria.

SUMMARY: The Secretary of Education (Secretary) establishes requirements, definitions, and approval criteria for the State Fiscal Stabilization Fund (Stabilization or SFSF) program. The Secretary may use one or more of these requirements, definitions, and approval criteria in awarding funds under this program in fiscal year (FY) 2010. These requirements, definitions, and approval criteria are based on the assurances regarding education reform that grantees are required to provide in exchange for receiving funds under the Stabilization program. We take this action to specify the data and information that grantees must collect and publicly report with respect to those assurances and to help ensure grantees' ability to collect and publicly report the required data and information.

DATES: These requirements, definitions, and approval criteria are effective January 11, 2010.

FOR FURTHER INFORMATION CONTACT: James Butler, State Fiscal Stabilization Fund Program, U.S. Department of Education, 400 Maryland Ave., SW., Room 3E108, Washington, DC 20202. *Telephone:* (202) 260–2274 or by *e-mail: phase2comments@ed.gov.*

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SUPPLEMENTARY INFORMATION:

Purpose of Program: The State Fiscal Stabilization Fund program provides approximately $48.6 billion in formula grants to States to help stabilize State and local budgets in order to minimize and avoid reductions in education and other essential services, in exchange for a State's commitment to advance essential education reform in key areas.

Background: Section 14005(d) of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA) requires a State receiving funds under the SFSF program to provide assurances in four key areas of education reform: (a) Achieving equity in teacher distribution, (b) improving collection and use of data, (c) standards and assessments, and (d) supporting struggling schools. For each area of reform, the ARRA prescribes specific actions that the State must assure that it will implement. In addition, section 14005(a) of the ARRA requires a State that seeks funds under the Stabilization program to submit an application to the Department containing such information as the Secretary may reasonably require. In this notice, we establish specific data and information requirements (the assurance indicators and descriptors) that a State receiving funds under the SFSF program must meet with respect to the statutory assurances. We also establish specific requirements for a plan that a State must submit (the State plan), as part of its application for the second phase [1] of funding under the SFSF program, describing its ability to collect and publicly report the required data and other information. Together, these two sets of requirements will provide transparency on the extent to which a State is implementing the actions for which it has provided assurances. Increased access to and focus on this information will better enable States and other stakeholders to identify strengths and weaknesses in education systems and determine where concentrated reform effort is warranted. We also intend to use the data and information that States collect and publicly report in assessing whether a State is qualified to participate in and receive funds under other reform-oriented programs administered by the Department.

As discussed elsewhere in this notice, an assurance indicator or descriptor may relate to data or other information that States currently collect and report to the Department, or to data or other information for which the Department is itself the source. In those cases, we do not establish any new data or information collection requirements for a State; rather, the Department will provide the State with the relevant data or other information that the State will confirm and publicly report.

The Department recognizes that requests for data and information should reflect an integrated and coordinated approach among the various programs supported with ARRA funds, particularly the SFSF, Race to the Top, School Improvement Grants (SIG), and Statewide Longitudinal Data Systems Grant programs. Accordingly, the Department has evaluated the requirements and definitions for this program in context with those other programs.

Section 14005(d)(2) of the ARRA requires a State receiving funds under the SFSF program to assure that it will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6311(b)(8)(C)), in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers. The indicators the Department has established will measure the extent to which a State is taking such actions and will provide data and other information on: (1) Student access to highly qualified teachers in high- and low-poverty schools, (2) current strategies and efforts to address inequities in the distribution of inexperienced, unqualified, or out-of-field teachers, (3) how teacher and principal performance is evaluated and how the results of these evaluations are used, and (4) the distribution of performance evaluation ratings or levels among teachers and principals.

Section 14005(d)(3) requires each State to assure that it will establish a longitudinal data system that includes the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act. The Department has established an indicator that will measure the extent to which States have implemented statewide longitudinal data systems that include all of the required elements. These elements constitute the minimum requirements of a modern statewide longitudinal data system. Such a system will enable States, local educational agencies (LEAs), and schools to, among other things: Follow student academic progress as a student moves from grade to grade; identify persistently lowest-achieving schools; and evaluate the effectiveness of specific programs.

The Department has established additional indicators identifying

[1] The Department is awarding SFSF program funds in two phases. In the first phase, the Department awarded 67 percent of a State's Education Stabilization Fund allocation, unless the State demonstrated that additional funds were required to restore FY 2009 State support for education, in which case the Department awarded the State up to 90 percent of that allocation. In addition, the Department awarded 100 percent of each State's Government Services Fund allocation in Phase I. The Department will award the remainder of a State's Education Stabilization Fund allocation in the second phase. A table listing the allocations to States under the SFSF program is available at: *http://www.ed.gov/programs/statestabilization/funding.html.*

whether a State provides teachers in grades and subjects in which it administers assessments with student growth data and with reports of individual teacher impact on student achievement. We believe that teachers' receipt of these data and reports should be a natural product of a statewide longitudinal data system that includes the required elements, particularly the requirements that such a system includes unique statewide student identifiers and a teacher identifier system with the ability to match teachers to students. Moreover, we believe that these are key examples of how reliable, high-quality data from a State's system can drive education reform in general and improvements in instructional programs in particular.

The ARRA also requires a State receiving funds under the SFSF program to assure that it will: (A) Enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of the ESEA (20 U.S.C. 7301a(a)); (B) comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students [2] in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and (C) take steps to improve State academic content standards and student academic achievement standards for secondary schools consistent with section 6401(e)(1)(A)(ii) of the America COMPETES Act (20 U.S.C. 9871(e)(1)(A)(ii)). To assess the extent to which a State is taking these actions, we are requiring that the State collect and publicly report data and other information regarding State assessment systems, including on the assessment of students with disabilities and limited English proficient students; State National Assessment of Educational Progress (NAEP) data; and data on the number of students who graduate from high school using a four-year adjusted cohort graduation rate, enroll in an institution of higher education (IHE) within 16 months of receiving a regular high school diploma, and complete at least one year of college credit (towards a degree) within two years of enrollment.

As many States prepare to significantly improve the rigor and effectiveness of their standards and assessment systems, we believe this information will provide stakeholders with vital transparency on the current status of those systems and inform efforts that are currently underway to improve them. The Department continues to encourage States to work together to develop and implement common internationally benchmarked standards and assessments aligned to those standards in order to ensure that students are college- and career-ready. However, until those standards and assessments are complete, States need to continue to ensure both the quality of their current standards and assessments, and that students are provided accommodations as necessary.

Section 14005(d)(5) of the ARRA requires a State receiving funds under the SFSF program to provide an assurance that it will comply with the requirements of section 1116(b)(7)(C)(iv) and section 1116(b)(8)(B) of the ESEA (20 U.S.C. 6316(b)(7)(C)(iv) and 6316(b)(8)(B)) with respect to Title I schools identified for corrective action and restructuring. In order to provide indicators of the extent to which a State is implementing this statutory assurance, we are requiring that the State provide data on the extent to which dramatic reforms to improve student academic achievement are implemented in Title I schools in improvement under section 1116(b)(1)(A) of the ESEA,[3] in corrective action, or in restructuring and secondary schools that are eligible for, but not receiving, Title I funds. Additionally, a State must provide data on the operation and performance of its charter schools. SFSF definitions and requirements for these indicators and descriptors will, where appropriate, be consistent with those in the Department's Race to the Top Fund and SIG notices to encourage and enable States to plan effectively and use diverse funding sources to accomplish consistent goals.

In addition to the specific data and information requirements relating to the four ARRA education reform assurances, we also establish requirements for a plan that a State must submit to the Department. In general, the State plan must describe the State's current ability to collect the data or other information needed for the assurance indicators and descriptors as well as the State's current ability to make the data or information easily available to the public. If the State is currently able to fully collect and publicly report the required data or other information at least annually, the State must provide the most recent data or information with its plan. If a State is not currently able to collect or publicly report the data or other information at least annually, the plan must describe the State's process and timeline for developing and implementing the means to do so as soon as possible but no later than September 30, 2011, the date by which States must obligate funds received under the SFSF program consistent with section 421 of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)). The State plan must describe the State's collection and public reporting abilities with respect to each individual indicator or descriptor.

As discussed previously, the data or information needed for an assurance indicator or descriptor is in some cases already reported to the Department by the State, or is provided by the Department. In those cases, it is understood that the State is currently able to collect the data or information; accordingly, the State's plan need only address the State's ability to publicly report the data or information, and the State need not include the data or information with its plan.

The State plan requirements apply generally across the education reform areas discussed above with the exception of education reform area (b) (improving collection and use of data) and new Indicators (c)(10) and (c)(11) (proposed Indicators (c)(11) and (c)(12)), for which we establish slightly different plan requirements. For example, for Indicator (b)(1) we require that a State describe in its plan whether the State's data system includes the required elements of a statewide longitudinal data system and, if the data system does not, the State's process and timeline for developing and implementing a system

[2] The Department recognizes that stakeholders often use terms such as ''English language learners'' rather than ''limited English proficient students'' when referring to students who are acquiring basic English proficiency and developing academic English skills. However, because the ESEA defines the term ''limited English proficient,'' and both the statute and the implementing regulations use this term, as well as the phrase ''students with limited English proficiency,'' we will continue to use the latter terms in this notice.

[3] Although the statutory assurance concerns only Title I schools in corrective action and restructuring, we are requiring that States include Title I schools in improvement as well when providing data on the extent to which dramatic reforms to improve student academic achievement are being implemented. Making this addition would be consistent with the school reform strategies that States are implementing using funds available under section 1003(g) of the ESEA (20 U.S.C. 6303(g)) (School Improvement Grants), which are intended to be applied to schools in improvement as well as to schools in corrective action or restructuring.

that meets all requirements as soon as possible but no later than September 30, 2011. As this indicator relates to a State's ability to collect and publicly report data, however, these requirements do not in effect differ substantially from the generally applicable State plan requirements (*i.e.*, the requirements that the State describe its abilities to collect and publicly report data or other information for a given indicator or descriptor). Moreover, the development and implementation of such a statewide longitudinal data system is intrinsic to a State's ability to collect and publicly report the data required by certain other indicators (*e.g.*, the indicators on student enrollment and credit completion in IHEs after graduation from high school).

In the case of new Indicators (c)(11) and (c)(12), regarding the data States will collect from IHEs on student enrollment and credit completion, the State is required to, at a minimum, possess the ability to collect and publicly report the data by September 30, 2011. As a result, a State plan need only address the development of capacity, and not implementation and public reporting for these indicators.

In addition to requirements relating to a State's ability to collect and publicly report data or other information for the respective assurance indicators and descriptors, we establish other general requirements for the State plan relating to the State's institutional infrastructure and capacity, the nature of any technical assistance or other support provided, the budget for implementing the plan, and the processes the State employs to ensure data and information quality and student privacy.

For the purposes of this program, the data and information are largely intended for public use, rather than for Federal reporting. Individual States and communities have the greatest power to hold their LEAs and schools accountable for the reforms that are in the best interest of their students. Rather than the Department collecting and warehousing this information, it is our intention that States and LEAs will make the information available to the public in a manner that is useful for stakeholders in understanding key information about education in each State and community. The Department believes that the most effective and expeditious way for States to share information with the public is via the Internet. Accordingly, any State that receives SFSF funding in Phase II must maintain a public Web site that provides the data and information that are responsive to the indicator and descriptor requirements. If a State does not currently provide the required data and information, it must provide on this Web site its plan with respect to the indicator or descriptor and its reports on its progress in implementing that plan.

In developing a plan as required in this notice, the State is encouraged to consult with key stakeholders, such as superintendents, educators, content experts, and parents as well as teachers' union, business, community, and civil rights leaders. Such consultation would ensure that these stakeholders are aware of the State's current ability to meet the requirements, can provide input on the means the State will develop to comply with the requirements, and can prepare to assist the State in implementing those means.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Title XIV—State Fiscal Stabilization Fund, Public Law No. 111–5.

We published a notice of proposed requirements, definitions, and approval criteria (NPR) for this program in the **Federal Register** on July 29, 2009 (74 FR 37837–37872). That notice contained background information and our reasons for proposing the particular requirements, definitions, and approval criteria. In addition to some minor editorial changes, there are several substantive differences between the NPR and this notice of final requirements, definitions, and approval criteria (NFR). These changes are summarized in the next section and described in greater detail in the *Analysis of Comments and Changes* section elsewhere in this notice.

Major Changes in the Final Requirements, Definitions, and Approved Criteria

The following is a summary of the major substantive changes in these final requirements from the requirements proposed in the NPR. (The rationale for each of these changes is discussed in the *Analysis of Comments and Changes* section elsewhere in this preamble.)

• The NFR makes several changes to the requirements for *Achieving equity in teacher distribution*. The specific changes are:

—The Department is adding a new Indicator (a)(2) that requires each State to confirm whether the State's Teacher Equity Plan (part of the State's Highly Qualified Teacher Plan) fully reflects the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers (as required in section 1111(b)(8)(C) of the ESEA).

—Descriptors (a)(1) and (a)(2) have been revised to require States also to describe the use of results from teacher and principal evaluation systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal.

—New Indicator (a)(3) (proposed Indicator (a)(2)) and new Indicator (a)(5) (proposed Indicator (a)(4)) have been revised to have States indicate whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion.

• The NFR makes the following changes to the requirements for *Improving collection and use of data:*

—New Indicator (b)(2) requires that each State indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.

—New Indicator (b)(3) (proposed Indicator (b)(2)) has been revised to require each State to indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. Under proposed Indicator (b)(2), a State would have been required to indicate whether it provides such teachers with data on the performance of their students on those assessments that include estimates of individual teacher impact on student achievement, in a manner that is timely and informs instruction.

• The final requirements make several changes to the indicators for *Standards and assessments*. The specific changes are:

—Proposed Indicator (c)(2), which required each State to indicate whether it was engaged in activities to enhance the quality of its assessments, and Proposed Descriptor (c)(1), which required States to describe those activities, have been removed from the final requirements.

—New Indicator (c)(11) (proposed Indicator (c)(12)) has been modified to require a State to provide data on student enrollment for students who enroll in an IHE within 16 months of

receiving a regular high school diploma. Proposed Indicator (c)(12) did not include a timeframe for this data element.

—New Indicator (c)(12) (proposed Indicator (c)(13)) now requires that a State collect data on progress toward a postsecondary degree only for students who attend a public IHE in the State. Under proposed Indicator (c)(13), a State would have provided these data for students who attended public IHEs both in State and out of State.

• The NFR makes several changes to the requirements for *Supporting struggling schools*. The specific changes are:

—Indicator (d)(1) and Indicator (d)(2) now require that a State also publicly report on average statewide school gains in the ''all students'' category and for each student subgroup (as defined under section 1111(b)(2)(C)(v) of the ESEA).

—New Descriptor (d)(1) requires each State to provide its definition of *persistently lowest-achieving schools.*

—Indicator (d)(3) now requires a State to provide the number and identity of Title I schools in improvement, corrective action, or restructuring that are persistently lowest-achieving schools.

—Indicator (d)(4) now requires a State to provide, of the persistently lowest-achieving Title I schools in improvement, corrective action, or restructuring, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.

—Indicator (d)(5) now requires a State to provide the number and identity of secondary schools that are eligible for, but do not receive, Title I funds that are persistently lowest-achieving schools.

—Indicator (d)(6) now requires a State to provide, of the persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.

—New Indicator (d)(9) requires a State to provide the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year.

—New Indicator (d)(10) requires a State to provide the number and percentage of charter schools that have made progress on State assessments in mathematics in the last year.

—New Indicators (d)(11) and (d)(12) (proposed Indicators (d)(8) and (d)(9)) require States to provide data and information on charter schools that have been closed within each of the last five years instead of over the last five years.

• The NFR makes several changes to the requirements under *State Plans.* The specific changes are:

—The NFR adds requirements regarding new Indicator (b)(2). For new Indicator (b)(2), the State must provide student growth data on their current students and students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs. A State must indicate whether the State provides teachers with such data; if the State does not provide teachers with such data, it must submit a plan for developing and implementing, as soon as possible but no later than September 30, 2011, the means to provide teachers with such data.

—The NFR revises the requirements for new Indicator (b)(3) (proposed Indicator (b)(2)). For new Indicator (b)(3) (proposed Indicator (b)(2)), a State must indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. If the State does not provide those teachers with such reports, it must submit a plan for how it will develop and implement the means to do so. Under the NPR, the State would have been required to provide those teachers with such reports (consistent with the indicator); if the State did not provide those teachers with such reports, it would have been required to submit a plan for how it would develop and implement the means to do so as soon as possible but no later than September 30, 2011.

—The NFR revises the requirements for new Indicators (c)(11) and (c)(12). For new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)), if a State will develop *but not implement* the means to collect and publicly report the data by September 30, 2011, it must submit a plan for how it will develop the means to collect and publicly report the data and provide evidence, by September 30, 2011, to demonstrate that it has developed the means to collect and publicly report that data. If a State will develop *and implement* those means (*i.e.,* the State will collect and publicly report those data) by September 30, 2011, the State must submit a plan for how it will collect and publicly report the data by the established deadline.

• The NFR includes definitions for *publicly report, student growth, persistently lowest-achieving schools, turnaround model, restart model, school closure, transformation model,* and *increased learning time.*

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPR, 60 parties submitted comments on the proposed requirements, definitions, and approval criteria. An analysis of the comments and changes to the requirements, definitions, and approval criteria since publication of the NPR follows.

We discuss substantive issues under the sections of the requirements to which they pertain. Generally, we do not address technical or minor changes, or suggested changes that we are not authorized to make under applicable law.

Indicator and Descriptor Requirements in General

Comment: A few commenters asserted that the proposed data and information requirements do not reflect Congressional intent that the SFSF program relieve the economic crisis in schools and districts nationwide. Commenters stated that SFSF funds are intended to help maintain support for education, not to support new programs or initiatives. One commenter noted that requirements for new programs or initiatives may be appropriate for competitive programs such as the Race to the Top Fund, but not for the SFSF program. In contrast, another commenter asserted that States should use SFSF funds for more than simply maintaining support for current education programs.

Discussion: The Department believes that SFSF funds should be used both to help restore support for education and to advance education reform. When States received funds under Phase I of the SFSF program, they provided assurances that they would take steps to address the key reform areas required under the ARRA. The data collected will provide information on the status of States' efforts to comply with these assurances.

Changes: None.

Comment: A number of commenters supported the Department's emphasis on the four reform areas and noted that focus on those four areas will improve

educational outcomes for students. Several commenters also expressed support specifically for the focus on data systems and improving teacher quality. One commenter supported linking student data to teachers. Some commenters stated that the requirements outlined in the notice were well-aligned with the reform areas of ARRA. Another commenter believed that the Department should have worked to ensure greater alignment among the four reform areas. A few commenters believed the proposed requirements went beyond the intention of the ARRA, and a few commenters stated that they did not believe the ARRA provided the Department with the statutory authority to require States to collect and publicly report the data and information as proposed in the NPR. One commenter stated that the proposed requirements would be an intrusion by the Federal Government into State and local control of education.

Discussion: In its application for initial funding under the SFSF program, each State was required, consistent with the statute, to provide an assurance that it would take steps to advance reforms in achieving equity in teacher distribution, enhancing standards and assessments, and supporting struggling schools. Each State also provided an assurance that it would establish a statewide longitudinal data system. The Department believes the requirements as proposed in the NPR and established in final in this notice are consistent with the statutory intent and requirements of the ARRA and will provide comprehensive information on a State's progress in the four assurance areas. The data and information that States will publicly report under the indicators and descriptors will inform State and local reform efforts and enable the Department to verify that a State is fulfilling the commitments it made in order to receive ARRA funds.

Changes: None.

Comment: Many commenters supported the Department's emphasis on making the data and information collected under the SFSF program publicly available. Commenters also noted that increased access to the data and information would help inform decision-making and increase transparency around education reform.

Discussion: The Department appreciates the commenters' support and agrees that the indicator and descriptor requirements will provide the public with valuable information on the status of education reform in their State.

Changes: None.

Comment: Several commenters requested that the Department provide States with a template for publicly reporting the data and information collected under the SFSF program. One commenter asserted that the Department must provide guidance to ensure that States fully understand the public reporting requirements. As an example, the commenter questioned what constitutes making the data ''easily accessible'' for parents and the general public. Another commenter questioned whether the lack of specific guidance from the Department on how to publicly report the information collected meant that we would allow States to use a variety of methods to meet their reporting obligation. The commenter encouraged the Department to provide States with flexibility in meeting these requirements. One commenter noted that the Department would need to consider the unique demographics of States when evaluating applications.

Discussion: The Department agrees that it is important to have clear guidance on the public reporting that is required under this notice. Accordingly, we have added a definition of *publicly report* to provide additional specificity and direction. We will also provide guidance on how States may meet the public reporting requirements for this program, and will be available to provide technical assistance to States throughout the application and reporting process.

Changes: The Department has added a definition of *publicly report,* which provides that the data or information required for an indicator or descriptor are made available to anyone with access to an Internet connection without having to submit a request to the entity that maintains the data and information in order to access that data and information. Under this definition, States are required to maintain a public Web site that provides the data and information that are responsive to the indicator and descriptor requirements. If a State does not currently provide the required data or information, it must provide on this Web site its plan with respect to the indicator or descriptor and its reports on its progress in implementing that plan.

In light of our addition of the definition of *publicly report,* we have modified the indicators, descriptors, plan requirements, definitions, and approval criteria, as appropriate, to substitute the term ''publicly report'' for ''report.''

Comment: Some commenters supported our intent to ensure consistency in collection and reporting requirements across the various programs funded under the ARRA. One commenter requested that the Department review the reporting requirements across all ARRA programs and use single data-element definitions for all programs in order to reduce redundant reporting and maintain transparency. A few commenters expressed concern that applications submitted for programs under the ARRA will be duplicative.

Discussion: The Department is coordinating the implementation of the programs under the ARRA in order to support a comprehensive approach to education reform and to minimize the burden on States to the extent possible. To that end, where appropriate, the Department is developing consistent requirements and definitions for SFSF, the Race to the Top Fund, SIG, the Investing in Innovation Fund, the Teacher Incentive Fund, and other ARRA programs; those changes are discussed later in this notice. The Department will evaluate applications based on the specific approval criteria we have announced for each program, and recognizes that, in certain instances, States will provide similar information across applications.

Changes: None.

Comment: One commenter stated that the Department did not propose requirements that comprehensively address the four education reform areas. Specifically, the commenter believed more indicators are needed in areas addressing the closing of achievement gaps, improving overall student performance, and achieving equity between high- and low-performing schools.

Discussion: While we agree that additional information in the four reform areas could be valuable to the public, educators, and policy-makers, we believe that adding the suggested indicators would be overly burdensome to States and LEAs. We believe the indicators and descriptors established in this notice generally provide sufficient data and information to measure State progress in the four reform areas for the purposes of the SFSF program. Additionally, the Department believes that meeting the requirement for each State to include all 12 elements described in the America COMPETES Act in its statewide longitudinal data system will provide a State with the capability to collect, analyze, and report meaningful information on the effectiveness of its programs in closing the achievement gap and improving student outcomes.

Changes: None.

Comment: One commenter stated that the Department is missing a major

opportunity to learn more about the role of professional development in school reform. The commenter encouraged the Department to collect data on how States are using and improving professional development to increase the performance levels of educators and their students.

Discussion: The Department agrees that professional development is an important factor in developing and supporting educators in improving their practices and encourages States and LEAs to collect and share data on professional development, but we do not believe that we should add an indicator requiring a State to report on professional development. However, we note that we have added a new indicator requiring States to make publicly available their Teacher Equity Plans, which include information on teacher professional development, and indicate if they have updated those plans. In addition, we have revised Descriptors (a)(1) and (a)(2) to require States to describe the use of results from teacher and principal evaluation systems in decisions regarding, among other things, professional development.

Changes: The Department has added new Indicator (a)(2) and has also revised Descriptors (a)(1) and (a)(2); these changes are described in more detail in the section of this notice entitled *Education Reform Area (a)—Achieving Equity in Teacher Distribution*.

Comment: One commenter stated that the Department should require each State to indicate whether the information it publicly reports includes information from charter schools and, if such information is not currently available, require the State to provide information in its State plan on the steps it will take to collect information on charter schools.

Discussion: Under the requirements as established in this notice, States will publicly report information on charter schools that are LEAs in the same manner that they provide information on any LEA. Further, information on public charter schools that are not LEAs will be provided in the same manner as for other public elementary and secondary schools.

Additionally, as proposed in the NPR and as established in this notice, the Department is requiring States to collect and publicly report information on the number of charter schools that are permitted to operate and that are actually operating in the State and each LEA (new Indicators (d)(7) and (d)(8) (proposed Indicators (d)(6) and (d)(7))). Moreover, and as discussed in greater detail later in this notice, the Department agrees that it is important to collect information on the academic achievement of students who attend charter schools and has added new Indicators (d)(9) and (d)(10), which measure the performance of charter school students on State assessments in reading/language arts and mathematics.

Changes: The Department has added new Indicators (d)(9) and (d)(10) to education reform area (d). These changes are described in greater detail in the section of this notice entitled *Education Reform Area (d)—Supporting Struggling Schools*.

Comment: A few commenters suggested that the Department create a sequence of reform requirements instead of asking States to implement simultaneous reforms in all areas. They specifically suggested the Department include goals, targets, or benchmarks for improving performance on the indicators and descriptors in order to move States closer to the goal of college and career readiness for all students.

Discussion: Section 14005(d) of the ARRA requires States to take action in each of the education reform areas and the Department envisions that in order to achieve the reform goals States will address each reform area simultaneously. We do not believe it is necessary to establish goals, targets, or benchmarks for improving performance because the purpose of the indicator and descriptor requirements is to provide transparency on the extent to which a State is implementing the actions for which it provided an assurance in its application for initial SFSF funding.

Changes: None.

Burden and Costs

Comment: Many commenters expressed concern that States and LEAs do not have the financial resources necessary to collect and publicly report the data and information that the Department proposed to require of States. One commenter noted that in order to comply with the collection and public reporting requirements, LEAs would need to take staff away from other essential functions. Another commenter stated that the requirements should reflect the fact that the SFSF program will not provide an ongoing source of funding for States.

Discussion: The Department acknowledges that there are costs associated with the data collection and public reporting requirements and encourages States to consider available sources of Federal funds to support this reporting. For example, a State may use SFSF Government Services funds to meet the Phase II application requirements. The Department has also raised the statutory caps on State administration under Title I, part A of the ESEA and part B, section 611 of the Individuals with Disabilities Education Act (IDEA) with respect to funds available for those programs under the ARRA in order to make it easier for States to meet ARRA reporting requirements.

Further, in response to comments, the Department is reducing the burden on States. For example, the Department is not requiring States to provide estimates of teacher impact on student achievement (new Indicator (b)(3) (proposed Indicator (b)(2)) but is now requiring that States provide student growth data to teachers (new Indicator (b)(2)).[4] In the NPR, the Department estimated that the total cost to States, LEAs, and IHEs of meeting the proposed requirements was approximately $61.7 million. Of that amount, approximately $30 million was associated with the costs of providing estimates of teacher impact on student achievement. The Department believes that providing teachers of reading/language arts and mathematics in grades in which the State administers assessments with student growth data will be much less costly.

Furthermore, the Department believes that the potential benefits from collecting and publicly reporting this information (*e.g.*, greater accountability, implementation of a statewide longitudinal data system to inform instruction, and more effective teacher and principal evaluation systems) outweigh the costs associated with the data requirements. The estimated costs and benefits of these requirements are described in greater detail in the *Summary of Costs and Benefits* section of this notice.

Changes: The Department has revised the State Plan requirements for new Indicator (b)(3) (proposed Indicator (b)(2)) to remove the requirement that States provide estimates of teacher impact on student achievement.

Comment: A few commenters claimed that the reporting requirements may lead to unnecessary costs for States and LEAs that have already invested time and effort in creating data systems or in implementing school reform programs that are not directly aligned with the assurance areas.

Discussion: The Department does not believe States will need to significantly reconfigure current State data systems in order to meet the ARRA requirement to establish a statewide longitudinal

[4] States are still required, however, to indicate whether they provide reports of individual teacher impact on student achievement through new Indicator (b)(3) (proposed Indicator (b)(2)) and, if they do not, to provide a plan for doing so.

data system that includes the 12 elements identified in the America COMPETES Act (although a State may need to expand its data system in order to include all 12 data elements). The America COMPETES Act predates enactment of the ARRA, and States are already designing data systems that incorporate the America COMPETES Act elements. We note that the elements have also been incorporated into the application requirements and guidance for the Department's Statewide Longitudinal Data Systems Grant program.

As part of the SFSF program, the Department is not requiring States to implement new school reform programs, but to publicly report on the current status of their programs and if they have implemented certain reform models in their persistently lowest-achieving schools.

Changes: None.

Comment: Several commenters supported our proposal to use data that the Department currently collects from States through ED*Facts* to meet the public reporting requirements of the program. Commenters noted that the use of these data would minimize some of the burden associated with the reporting requirements for this program.

Discussion: The Department agrees with the comments and has attempted to reduce the reporting burden by using data from ED*Facts* and other readily available data whenever possible.

Changes: None.

State Plan Requirements

Comment: One commenter suggested that the Department require States to obtain the support of key stakeholders for the plan the State will develop to meet the SFSF requirements. Another commenter suggested that the Department require States to collaborate with youth-serving organizations in their planning efforts so as to ensure the success of every young person; the commenter recommended adding workforce organizations, child welfare and juvenile/criminal justice agencies, and child and youth-serving community-based organizations to the list of stakeholders with whom a State must consult when developing the State plan.

Discussion: The Department recognizes the importance of collaboration and cooperation among educational agencies, community stakeholders, policy-makers, and youth-serving organizations. While the Department encourages States to consult with key stakeholders when developing the State plan, we do not believe it is necessary to require States to consult with stakeholders generally or with any specific group because there will be great variation across States as to the groups with whom it would be appropriate to consult.

Changes: None.

Comment: Many commenters indicated that it is unrealistic to require States to implement their plans by September 30, 2011. One commenter characterized the deadline as arbitrary. Another commenter noted that the deadline will not allow States to collect data reflecting the potentially positive impact of SFSF funds on student achievement. Commenters recommended reconsideration of this timeline. One commenter suggested that the Department grant individual States extensions of the deadline without requiring States to justify such extensions.

Discussion: The Department believes that the requirements of the State plan provide critical information that is more useful to stakeholders if it is presented in a timely manner. Further, the Department believes that two years is an appropriate amount of time to implement a plan to collect and publicly report the required information. However, in recognition of existing State work in transitioning to the adjusted four-year cohort graduation rate, the Department has modified the plan requirements applicable to new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) so that a State is required only to provide evidence that it has developed the means to collect and publicly report the data by the deadline.

As discussed in more detail later in this notice, we are also revising the State plan requirements for new Indicator (b)(3) (proposed Indicator (b)(2)). For new Indicator (b)(3) (proposed Indicator (b)(2)), a State must indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. If the State does not provide those teachers with such reports, it must submit a plan for how it will develop and implement the means to do so. Under the NPR, the State would have been required to provide those teachers with such reports (consistent with the indicator); if the State did not provide those teachers with such reports, it would have been required to submit a plan for how it would develop and implement the means to do so as soon as possible but no later than September 30, 2011.

Changes: The Department has revised the State plan requirements for new Indicator (b)(3) (proposed Indicator (b)(2)), new Indicator (c)(11) (proposed Indicator (c)(12)), and new Indicator (c)(12) (proposed Indicator (c)(13)). These revisions are discussed in greater detail later in this notice.

Applications and Approval Criteria

Comment: Three commenters expressed concern regarding the timeline for submission of the SFSF Phase II application, given the extensive information the application requires. One commenter elaborated that the SFSF Phase II application timeline could negatively affect a State's ability to meet the Race to the Top application deadline because, in a July 29, 2009 **Federal Register** notice, the Department proposed that States must have an approved SFSF Phase II application to be eligible for Race to the Top funds. One of these commenters emphasized that SFSF Phase II funds are critical to preventing more serious school aid reductions than those currently under consideration in the State.

Discussion: The Department will review Phase II applications submitted by the deadline, which we will publish in a separate notice in the **Federal Register**, on a timely basis to ensure that States will meet any Race to the Top eligibility requirements related to SFSF application approval and to provide additional resources expeditiously to support elementary, secondary, and postsecondary education.

Changes: None.

Comment: One commenter proposed that the Department include an additional approval criterion requiring States to demonstrate that they have expended their SFSF funds consistent with program requirements.

Discussion: We do not believe that the suggested approval criterion is necessary. States will provide information on the uses of funds in the quarterly reports that they submit pursuant to section 1512 of the ARRA; these reports will be publicly available at *http://www.recovery.gov*. In addition, the Department will collect information on uses of SFSF funds through the annual performance reports States are required to submit under section 14008 of the ARRA. The annual performance reports will be made available to the public on the Department's Web site at *http://www.ed.gov*. Furthermore, during its monitoring of State implementation of the SFSF program, the Department will review State and local uses of program funds to ensure compliance with applicable requirements.

Changes: None.

Indicator and Descriptor Requirements Education Reform Area (a)—Achieving Equity in Teacher Distribution

Teacher Qualifications: Indicator (a)(1)

Comment: Several commenters expressed support for our proposal to use existing data on teacher qualifications from the Department's ED*Facts* system for proposed Indicator (a)(1). These commenters believed that leveraging existing data in ED*Facts* would minimize collection and reporting burden on States and LEAs while still ensuring that high-quality information is provided to the public. However, one commenter requested clarification as to the State's responsibilities for confirming the data in ED*Facts*.

Discussion: In general, we have sought to ensure that existing data from the Department's ED*Facts* system (or other data for which the Department is itself the source) are used to populate the indicators for this program wherever possible so as to minimize the burden on States and LEAs. In this case, we believe that existing data in ED*Facts* on courses taught by highly qualified teachers is appropriate as a measure of States' compliance with the statutory assurance.

As stated in the NPR, a State will not be required to perform any additional analysis or verification in confirming indicator data that are in ED*Facts*. We believe there are sufficient safeguards in place to ensure the completeness and accuracy of data submitted by States in ED*Facts* and do not expect or require a State to reexamine or refresh the data. Rather, the confirmation a State will provide is meant to be limited to an acknowledgment that the data provided by the Department are the same data submitted by the State.

Changes: None.

Comment: One commenter requested that the Department clarify how stakeholders should use the data reported for proposed Indicator (a)(1) to identify inequities in the distribution of highly qualified teachers across LEAs. Specifically, the commenter requested clarification on whether stakeholders should identify inequities by comparing the data generally for all LEAs across the State, or for subsets of LEAs in the State based on shared characteristics such as size or location.

Discussion: The Department is requiring States to make publicly available data on the distribution of highly qualified teachers across LEAs so that educators, policymakers, and other stakeholders may address inequities in the distribution of teachers between high- and low-poverty schools. Decisions on how best to use the specific data should be made at the State and local levels.

Changes: None.

Comment: A few commenters recommended that the definitions of *highest-poverty school* and *lowest-poverty school* applicable to proposed Indicator (a)(1) be revised to require States to identify these schools specifically using data on student eligibility for free- or reduced-price lunches under the Richard B. Russell National School Lunch Act (NSLA), rather than using the poverty measure chosen by the State. One of these commenters asserted that these terms should be given the same meaning across States to prevent inconsistencies in reporting and to ensure that the data reported by States can be aggregated at the national level.

Discussion: The Department permits States to use a poverty measure of their choice when reporting data on courses taught by highly qualified teachers in the highest- and lowest-poverty schools in their Consolidated State Performance Reports and in the annual State Report Cards required under section 1111(h)(1) of the ESEA. While States may and frequently do use student eligibility for free- or reduced-price lunches under the NSLA as the poverty measure for reporting these data, this is not always the case. While the Department appreciates the concern for comparability of data for this indicator, we believe that requiring the use of student eligibility for free- or reduced-price lunches under the NSLA as the poverty measure for this indicator would introduce unnecessary confusion for States that use other poverty measures when reporting data on the poverty level of students in their schools.

Changes: None.

Comment: One commenter recommended that the Department include additional metrics relating to the equitable distribution of teachers that would require States to describe their plans for ensuring, consistent with the statutory assurance, that students from low-income families and minority students are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, and to describe the measures States would use to evaluate and report on the implementation of those plans.

Discussion: We agree with the commenter on the importance of States' developing plans to ensure equity in the qualifications of teachers serving disadvantaged students and their peers and evaluating the impact of those plans. We note, however, that, to assess States' compliance with the requirements of the ESEA referenced in the statutory assurance in this reform area (*i.e.*, the requirements of section 1111(b)(8)(C)), the Department has previously required States to develop Highly Qualified Teachers State Plans. Included in these plans is a component (known as a ''Teacher Equity Plan'') in which the State describes the steps being taken to ensure that students from low-income families and minority students are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.[5] Rather than include indicators that would collect information on this topic that is additional to or duplicative of the information already provided by States in their Teacher Equity Plans, we have added an indicator that requires States to indicate whether they have updated and publicly reported these plans.

Changes: We have revised the indicators in this education reform area to include a new Indicator (a)(2), which requires a State to confirm whether the State's Teacher Equity Plan (as part of the State's Highly Qualified Teacher Plan) fully reflects the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers (as required in section 1111(b)(8)(C) of the ESEA). With the addition of these Indicators, we have renumbered the remaining Indicators and Descriptors in this Education Reform Area.

Comment: A number of commenters expressed concern that, while proposed Indicator (a)(1) would require States to provide data on the distribution of highly qualified teachers between highest- and lowest-poverty schools, it would not provide similar data with respect to teachers of minority students. These commenters typically recommended that an indicator be added in this education reform area requiring States to provide data on the distribution of highly qualified teachers between highest- and lowest-minority schools; one of these commenters further recommended that the Department include in the final requirements definitions of ''highest-minority school'' and ''lowest-minority school.''

Discussion: As discussed previously, we have revised the indicators in this education reform area to include an indicator requiring a State to confirm that its Teacher Equity Plan accurately and fully reflects the steps the State is

[5] These plans are available at *http://www.ed.gov/programs/teacherqual/hqtplans/index.html.*

taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers. These plans include data related to whether minority student populations are served by highly qualified teachers (in addition to data related to whether such teachers serve students from low-income families). We expect that, in confirming or providing their current plans, States will provide up-to-date data on this indicator as well as on the distribution of highly qualified teachers between highest- and lowest-minority schools. For this reason, we do not believe it is necessary to include the additional indicators recommended by the commenters.

Changes: None.

Comment: Several commenters asserted that proposed Indicator (a)(1) would not furnish data on whether students from low-income families or minority students are taught at higher rates than other students by out-of-field or inexperienced teachers. These commenters typically recommended that indicators be added in this education reform area to provide data on the distribution of in-field and experienced teachers between highest- and lowest-poverty schools, as well as between highest- and lowest-minority schools.

Discussion: Inasmuch as we have revised the requirements in this education reform area, as discussed previously, to include an indicator regarding States' Teacher Equity Plans (in which States describe the steps being taken to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers), we do not believe it is necessary to include additional indicators that would provide data specifically on the distribution of in-field or experienced teachers. (We note also that section 9101(23) of the ESEA requires that a highly qualified teacher demonstrate subject knowledge or competence in the subjects the teacher teaches in addition to possessing a State teaching credential; consideration of whether a teacher is teaching in or out of field is, thus, incorporated in the definition of ''highly qualified teacher'' used in Indicator (a)(1).)

Changes: None.

Comment: Several commenters made general statements that the definition of ''highly qualified teacher'' is flawed or does not identify high-quality teachers, though some acknowledged the ''interim utility'' of the term as other, more accurate or more effective measures of teacher quality are considered.

Discussion: While the Department believes that data on highly qualified teachers do have value, we recognize that these data are limited by their sole focus on teacher qualifications. As reflected in the other indicators in this education reform area (discussed in further detail later in this notice), the Department believes that other measures, such as measures of teacher effectiveness, are needed if efforts to identify high-quality teachers are to be successful.

Changes: None.

Teacher and Principal Effectiveness: General

Comment: Several commenters expressed support for including in this education reform area the proposed metrics relating to teacher and principal effectiveness, in particular the indicators on performance ratings from teacher and principal performance evaluation systems (proposed Indicators (a)(2) through (a)(6)). However, several commenters questioned whether the Department had sufficient justification for including these metrics. One commenter asserted that requiring States to collect and publicly report data and information for these metrics is not statutorily relevant, and another asserted that the metrics exceed the requirements of the statute. Another commenter believed that these indicators, as they concern evaluation systems that are typically developed and implemented locally, represent an unwarranted intrusion by the Federal Government into local matters. Another commenter asserted that the ARRA does not provide the Department with the authority to require States to collect and publicly report data and information on principals.

Discussion: We disagree with the commenters that the Department has insufficient justification for establishing these requirements. Section 14005(a) of the ARRA authorizes the Secretary to require States to submit an application for funds under this program containing such information as the Secretary may reasonably require. In addition to requiring States to take actions to address inequities in the distribution of highly qualified teachers, the statutory assurance in this education reform area (section 14005(d)(2)) requires States to ''take actions to improve teacher effectiveness'' and, thus, clearly provides a basis on which to establish requirements for the collection and public reporting of data and information related to teacher effectiveness. As stated in the NPR (74 FR 37838), we believe that local evaluation systems play a principal role in determining teacher effectiveness. Accordingly, we believe that requiring States to collect and publicly report data and information on teacher evaluation systems is reasonable and justified.

With respect to principal evaluation systems, as stated in the NPR (74 FR 37838), effective school administration is a key factor in effective teaching and learning. We likewise believe that local evaluation systems play a primary role in determining the effectiveness of school principals. Accordingly, we believe that requiring States to collect and publicly report data and information on principal evaluation systems is also reasonable and justified.

Changes: None.

Comment: A few commenters stated that, with the proposed metrics, the Department incorrectly or improperly equated the terms ''highly qualified teacher'' and ''effective teacher.''

Discussion: As discussed earlier, the statutory assurance in this reform area provides a basis on which to collect data and information related both to teacher effectiveness and to teacher qualifications. In collecting data and information on both of these items, it is not the intention of the Department to conflate the two; on the contrary, the intent is precisely to acknowledge a difference in these concepts. Historically, in assessing the quality of our nation's teachers, the Department has focused, through ''highly qualified teacher'' measures, on the qualifications of teachers to the exclusion of other factors. By including considerations of teacher effectiveness in the statutory assurance, we believe the Congress has now signaled that this focus is unnecessarily narrow and that additional measures of teacher quality are needed—and, in particular, measures that are associated more closely with the outcomes of teaching and learning than with inputs such as qualifications. The metrics related to teacher effectiveness are accordingly intended to provide new information on teacher quality, separate and apart from information currently available on States' compliance with the highly qualified teacher requirements of the ESEA.

Changes: None.

Comment: One commenter objected to the proposed metrics relating to teacher and principal effectiveness on the grounds that, in estimating the burden associated with these requirements, the Department stated that it does not possess definitive information on the extent to which teacher and principal

evaluations are officially implemented in LEAs.

Discussion: We disagree with the commenter's assertion that a lack of information on whether teacher and principal evaluations are officially implemented in LEAs casts doubt on the justification for these metrics and believe, moreover, that the metrics will help to fill the information gaps that caused the Department's burden estimates to be speculative.

Changes: None.

Comment: Numerous commenters expressed concerns about the utility or purpose of the proposed metrics relating to teacher and principal effectiveness. A few commenters asserted that the data and information collected and publicly reported for these metrics would not enable stakeholders to identify effective teachers or principals or to improve student achievement; to this point, many commenters asserted that, due to variation in the design and implementation of local evaluation systems, the data and information collected and publicly reported for these metrics would not be comparable across LEAs (or States), while another commenter asserted that local evaluation systems are generally of poor quality. In light of concerns about comparability, one commenter suggested that the Department provide a model for reporting the data and information for these proposed metrics, while another commenter recommended that, in lieu of these metrics, the Department instead direct States to develop plans for working with their LEAs to improve evaluation systems and the distribution of effective teachers and principals across LEAs and schools.

Discussion: While we appreciate the questions raised by these commenters regarding the purpose of the data and information that States will collect and publicly report under these metrics, we believe that the metrics will serve a very important purpose, namely, providing new, crucially valuable information on teacher and principal quality. As discussed earlier, information available on teacher and principal quality has historically been limited, at both the State and Federal levels, to information on the qualifications or years of service of teachers. By requiring States to comply with these metrics, the Department intends that new and more comprehensive information will be available for stakeholders and that this availability will, in turn, shift the focus of teacher quality debates toward the effectiveness of educators.

Although variations in the design and implementation of evaluation systems may mean that the data on teacher and principal effectiveness ratings (as required under proposed Indicators (a)(2) through (a)(6)) are not comparable across those systems (*i.e.,* in States that do not require the implementation of uniform evaluation systems across LEAs), such data will nonetheless provide information on teacher and principal effectiveness that is informative for stakeholders, most importantly parents. Although variations in the quality of those evaluation systems may also mean that these ratings data are not reliable in all cases, requiring the reporting of these data for all LEAs will nonetheless shine a light on the limitations of current evaluation systems where they exist and can drive efforts to improve those systems where such improvements are needed. Because the methods for evaluating teachers vary greatly across States and LEAs, the Department does not believe that establishing a national model for reporting these data is appropriate.

Changes: None.

Comment: Several commenters cautioned that the proposed metrics would force standardization upon local evaluation systems (which in some cases would be prohibited by State laws providing for local control over education) and would reduce opportunities for local innovation; related to this point, one commenter requested clarification about whether the proposed metrics would effectively require that all LEAs in a State employ a single, uniform system for evaluating teachers and for evaluating principals and that LEAs aggregate and report results from that system.

Discussion: Although the Department hopes that the metrics in this area will help promote the effective design and use of evaluation systems generally across LEAs and States, we are not requiring with these metrics that States and LEAs implement uniform teacher and principal evaluation practices.

Changes: None.

Comment: Several commenters asserted that the proposed metrics relating to teacher and principal effectiveness would be unduly burdensome on States and LEAs, particularly on small States and States with many small LEAs. A few of these commenters requested that the Department provide States with the flexibility in meeting these requirements, such as by collecting the data and information for a representative sample rather than for all of the LEAs in the State.

Discussion: We recognize that the proposed requirements for this program place some burden on States and LEAs and have sought to reduce that burden significantly, as reflected in the changes to the proposed requirements discussed elsewhere in this notice. With respect to these indicators, however, we continue to believe that the benefits of collecting and reporting the data and information for all LEAs outweigh the costs of doing so.

Further, we do not believe that it would be sufficient to report data for only a sample of LEAs. The Department believes that the State should make this information publicly available for all LEAs so that each LEA can make any necessary reforms.

Changes: None.

Comment: A few commenters recommended that the Department review data collections currently in the ED*Facts* system to ascertain whether data for the proposed metrics on teacher and principal effectiveness are already available or potentially available through modifications to other data. Related to this point, one commenter noted that new data collection requirements may not be the most immediately effective means for measuring a State's compliance with the statutory assurance, given the amount of time and effort initially needed to meet the requirements.

Discussion: The Department appreciates these comments and, as noted, has sought to use data and information from existing Department collections in the metrics for this program to the extent possible. However, the Department does not currently collect data related to teacher and principal effectiveness from States through the ED*Facts* system or other systems so it is necessary for us to establish a new requirement for the collection of those data.

Changes: None.

Comment: One commenter requested clarification as to whether the collection and reporting of data and information for the proposed metrics relating to teacher and principal effectiveness must occur regularly or one time only.

Discussion: Consistent with the final State Plan requirements established in this notice, a State must collect and publicly report the data and information required for these metrics at least annually and must be able to complete its first collection and reporting of the data and information as soon as possible but no later than September 30, 2011. The Department will determine at a later date whether the collection and public reporting of these data and information will continue after September 30, 2011.

Changes: None.

Comment: A few commenters recommended that the Department or States take a more proactive approach toward improving teacher and principal evaluation systems and developing effective school personnel than what is reflected in the proposed metrics in this area. These commenters' recommendations include the following: the Department should promote the development of evaluation systems that are specifically designed for that purpose, incorporate student achievement and evidence-based instructional practices as evaluation criteria, and use a range of ratings beyond simple bimodal ratings (*e.g.,* ''meets expectations'' versus ''does not meet expectations''); the Department should define ''teacher effectiveness'' and provide guidance to States and LEAs on how to align evaluation systems with that definition; the Department should provide guidance to States and LEAs on standards for principal evaluation; and States should work toward developing systems for licensing teachers based on effectiveness.

Discussion: We appreciate these recommendations and agree in large part that the Department should play a role in supporting the development of effective teachers and principals and the systems used to evaluate their performance. In fact, the Department has sought and continues to seek to promote the implementation by States and LEAs of evaluation systems that produce meaningful and actionable information on teacher and principal effectiveness through its competitive grant programs, including the Teacher Incentive Fund. While we will take these recommendations into consideration for those programs and in future policymaking (including in the reauthorization of the ESEA), we do not believe it would be appropriate to incorporate them formally into the requirements for this program.

Changes: None.

Comment: Several commenters recommended that the Department include additional metrics related to effective teaching and learning, including: Indicators about State efforts to improve teacher preparation, recruitment, and compensation; indicators about factors likely to attract high-quality teachers to struggling schools, such as teaching and learning conditions, leadership, safety, autonomy, and flexibility; indicators about other factors likely to affect student achievement, such as class size, attendance, and student migration; indicators relating to specific educational actions and practices in schools that lead to dramatic gains in student achievement; indicators on the teaching of Advanced Placement, International Baccalaureate, and other advanced courses in secondary schools; and an indicator on teacher attendance, particularly in high-poverty schools.

Discussion: Although the Department believes that there is value in establishing indicators such as those mentioned by the commenters in the requirements for this program, we are mindful of ensuring that we minimize to the extent possible the burden on States and LEAs in meeting these requirements and, in this instance, do not wish to create additional burden in the form of additional requirements.

Changes: None.

Teacher and Principal Effectiveness: Descriptors (a)(1) and (a)(2)—Evaluation System Descriptions

Comment: One commenter requested clarification as to the purpose of the proposed requirements to describe the systems used to evaluate the performance of teachers and principals in LEAs (Descriptors (a)(1) and (a)(2)). The commenter intimated that the proposed descriptors were unnecessary and that indicators alone should be sufficient to provide information on teacher and principal effectiveness.

Discussion: As reflected in the NPR and discussed previously in this notice, we believe that descriptions of teacher and principal evaluation systems will provide stakeholders with much-needed (and, often, otherwise unavailable) information on the design and usage of these systems in LEAs and States. Moreover, we believe that these descriptions will provide necessary context for the data and information collected and reported for the indicators on ratings received by teachers and principals from these systems (new Indicators (a)(3) through (a)(7) (proposed Indicators (a)(2) through (a)(6)); without information on the design and usage of evaluation systems, data on these ratings may be too open to interpretation by stakeholders and may ultimately not be useful.

Changes: None.

Comment: Several commenters requested that the Department provide more information or greater prescription on the proposed requirements to describe the systems used to evaluate the performance of teachers and principals in LEAs. Several commenters recommended that the Department further specify the information that should be included in providing these descriptions, and a few commenters inquired as to whether the Department would provide a sample or rubric for the descriptions. A few other commenters recommended or intimated that States be required to describe specific components or aspects of evaluation systems used in LEAs, such as purpose, methodology, participants, frequency of implementation, feedback protocols, and procedures for review and appeals. In contrast, one commenter recommended that States be provided flexibility in the types of information or level of detail to be included in these descriptions.

Discussion: We agree that more information on how States may meet the requirements to describe teacher and principal evaluations is necessary and will address this issue in guidance for this program. In recognition, however, of the limited availability of information on a ''typical'' evaluation system and the potential for wide variation in these systems across LEAs and States, and also of the additional burden that may be conferred upon States and LEAs in responding to additional requirements, we do not believe it would be appropriate to include additional requirements in this area.

Changes: None.

Teacher and Principal Effectiveness: New Indicators (a)(3) and (a)(6) (Proposed Indicators (a)(2) and (a)(5))—Whether Systems Include Student Achievement Outcomes as Evaluation Criterion

Comment: One commenter expressed support for proposed Indicators (a)(2) and (a)(5), which ask whether the systems used by LEAs to evaluate the performance of teachers and principals include student achievement outcomes as an evaluation criterion, and encouraged the Department to promote the use of such outcomes in performance evaluations. A number of other commenters expressed concern about these proposed indicators. These commenters asserted that fair and effective teacher and principal evaluation systems include multiple evaluation criteria and/or employ comprehensive evaluation frameworks and that, through the proposed indicators, the Department was placing undue weight or focus on the inclusion of student achievement outcomes to the detriment of other factors important to evaluation. One commenter asserted that using student achievement outcomes in evaluating teachers and principals is inappropriate.

In light of concerns such as these, a few commenters recommended that the Department ask for data or information on specific criteria used to evaluate teacher and principal performance other than student achievement outcomes,

such as preparation, planning, teaching practices, leadership skills, cultural competence, extracurricular roles and assignments, working conditions, and staff turnover rates.

Discussion: The Department agrees that teacher and principal evaluation systems generally should include, in addition to criteria relating to student achievement outcomes, other criteria such as those noted by the commenters. In providing the descriptions of teacher and principal evaluation systems under Descriptors (a)(1) and (a)(2), we encourage States to include discussion of those criteria. (As noted previously, the Department plans to provide guidance for this program that will provide more information to States on describing their teacher and principal evaluation systems; among other topics, this guidance will address the information a State may want to include in these descriptions with respect to evaluation criteria.)

However, we also believe that student achievement outcomes are a central factor in evaluation systems that yield fair and reliable assessments of performance (as stated in the NPR (74 FR 37838)). Therefore, we believe that requiring States to report on the inclusion of student achievement outcomes as a specific criterion in evaluation systems is warranted.

Changes: None.

Comment: Several commenters recommended that we include indicators to address whether teacher and principal evaluation systems incorporate opportunities for feedback and professional development and the nature or types of those opportunities.

Discussion: The Department agrees that strong teacher and principal evaluation systems will include mechanisms for providing teachers and principals with feedback about their performance and for identifying professional development and other support needs and opportunities based on those results. We encourage States to discuss the inclusion of these elements in their descriptions of teacher and principal evaluation systems under Descriptors (a)(1) and (a)(2), but are not requiring States to collect and report information separately and specifically on these elements as part of the requirements for this program.

Changes: None.

Comment: Several commenters objected to the Department's proposal to require the use of student achievement outcomes in teacher and principal evaluations on the grounds that to do so exceeds the requirements of the statute or is not supported by research.

Discussion: These commenters appear to misunderstand the requirements proposed by the Department. Although (as discussed previously) we believe that student achievement outcomes are a central factor in effective teacher and principal evaluations, we are not requiring, through new Indicators (a)(3) and (a)(6) (proposed Indicators (a)(2) and (a)(5)), the use of student achievement outcomes as an evaluation criterion; rather, we are requiring merely that States indicate whether such outcomes are used in local teacher and principal evaluation systems.

Changes: None.

Comment: Several commenters asserted that student assessment results should not be the sole or central student achievement outcome used in teacher and principal evaluations and that multiple other outcomes should be considered, such as grades; portfolios; and results of written work, group work, presentations, and ''capstone'' projects. In contrast, one commenter recommended that the definition of *student achievement outcomes* include only summative and interim assessments, and another commenter suggested that, in the evaluation of principals, student growth should be the only student achievement outcome specified.

Discussion: We agree with the commenters that student assessment results should not be the sole achievement outcome used in evaluating teachers and principals. The definition of *student achievement outcomes* applicable to new Indicators (a)(3) and (a)(6) (proposed Indicators (a)(2) and (a)(5)) includes, in addition to student assessment results, student grades and rates at which students are on track to graduate from high school and does not prohibit the consideration of additional outcomes in teacher and principal evaluations, provided at least one of these outcomes is used. Further, we note that the purpose of the definition of *student achievement outcomes* is, again, not to require the use of any specific student achievement outcome in teacher and principal evaluations, but rather to specify the types of student achievement outcomes that a State would include when responding to the indicators. Although (as reflected in the discussions earlier in this notice) the Department believes that such outcomes should be included in local evaluation systems, a State and its LEAs remain permitted to use these or other achievement outcomes or no such outcomes at all.

Changes: None.

Comment: A number of commenters expressed concern about the specific use of results from academic assessments administered by the State for accountability purposes as a student achievement outcome in teacher and principal evaluations. One commenter noted that using such results to evaluate teachers and principals is prohibited by law in the commenter's State. Several other commenters cautioned against using State assessment results to evaluate teacher and principal performance as such assessments, they believe, are not designed specifically for this purpose. In contrast, one commenter recommended that the definition of ''student achievement outcomes'' applicable to proposed Indicators (a)(2) and (a)(5) include State academic assessments only or primarily, so as to prevent inconsistencies in reporting and the uncoupling of instruction from State standards.

Discussion: As discussed previously, new Indicators (a)(3) and (a)(6) (proposed Indicators (a)(2) and (a)(5)) do not require the use of any specific student achievement outcome (including results from student assessments such as the State's assessments) in teacher and principal evaluations. If an LEA or State were to use student assessment results as an evaluation criterion, it would be free to use results from assessments other than the State assessments if it finds those assessments to be appropriate or effective (and permissible) in the teacher or principal evaluation context.

Changes: None.

Comment: One commenter suggested that using student assessment results may be problematic in cases where teachers and principals are not evaluated on an annual basis.

Discussion: As stated previously, the Department is not requiring the use of student assessment results in teacher and principal evaluations as part of the requirements for this program. In general, however, the Department does not believe that considerations of the frequency of teacher and principal evaluations should negatively affect decisions to include results from student assessments in those evaluations. In the Department's view, there is nothing to prevent LEAs from using student assessment results over multiple years in evaluations of teachers and principals if such evaluations occur less than annually.

Changes: None.

Comment: One commenter requested clarification of the phrase ''rates at which students are on track to graduate from high school,'' which is included among the outcomes identified in the Department's definition of *student achievement outcomes* applicable to

proposed Indicators (a)(2) and (a)(5). The commenter asserted that this phrase is ambiguous as written.

Discussion: Although we are uncertain of the ambiguity to which the commenter is referring, we will further clarify this phrase in guidance for this program.

Changes: None.

Comment: One commenter requested clarification as to the relationship between proposed Indicators (a)(2) and (a)(5) and the proposed selection criterion for the Department's Race to the Top Fund regarding the extent to which an applying State, in collaboration with its LEAs, has a plan to increase the use of student growth as a significant factor in the evaluation of teachers and principals.

Discussion: In the July 29, 2009 notice of proposed priorities, requirements, definitions, and selection criteria for the Race to the Top Fund, the Department proposed a definition of ''student growth,'' which defined that term as the change in achievement data for an individual student between two points in time. We agree that, to the extent possible, there should be consistency in definitions across programs.

Changes: The Department has revised proposed Indicators (a)(2) and (a)(5) so that States will now report on the extent to which systems used to evaluate the performance of teachers and principals include student achievement outcomes or student growth data as an evaluation criterion. These Indicators have been renumbered as Indicators (a)(3) and (a)(6) respectively.

The Department has also added a new definition of *student growth*, which is defined as the change in achievement for an individual student between two or more points in time. The definition further provides that for grades in which the State administers summative assessments in reading/language arts and mathematics, student growth data must be based on a student's score on the State's assessment under section 1111(b)(3) of the ESEA. A State may also include other measures that are rigorous and comparable across classrooms.

Teacher and Principal Effectiveness: New Indicators (a)(3) Through (a)(7) (Proposed Indicators (a)(2) Through (a)(6))

Comment: A few commenters expressed support for proposed Indicators (a)(2) through (a)(6) pursuant to which States would be required to provide data and information on the performance ratings of teachers and principals. These commenters further recommended that additional information be collected and reported on the teachers and principals receiving the lowest ratings from evaluations, including whether those teachers and principals continue teaching or remain employed by the LEA.

Discussion: We appreciate the commenters' support for these indicators and agree that information such as that suggested by the commenters would be valuable to collect. We are mindful here, however, of local restrictions on reporting data on the outcomes of teacher and principal evaluations in terms of retention or removal, and thus believe it would be more appropriate to collect information on policies for the use of evaluation results, rather than actual outcomes. In addition, we believe that it is important to collect information on the use of evaluation results not just with respect to teacher and principal retention and removal, but for other employment decisions as well, such as development, compensation, and promotion.

Changes: We are revising Descriptors (a)(1) and (a)(2) to require States also to describe the use of results from teacher and principal evaluation systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal.

Comment: A few commenters requested clarification as to how these requirements could be met in the case of an LEA whose evaluation system does not provide ratings or levels. One of these commenters questioned whether reporting would be required for an LEA that uses its evaluation system to determine whether teachers or principals meet or do not meet expectations but does not otherwise implement a rating scale.

Discussion: The Department will provide guidance to States on how to publicly report indicator data for LEAs whose evaluations systems do not produce ratings or levels for teacher or principals. We note here, however, that we would consider binary classifications of effectiveness (*e.g.,* ''meets expectations'' versus ''does not meet expectations'') as effectiveness ratings and that States should include LEAs using such classifications when publicly reporting data on these indicators.

Changes: None.

Comment: A number of commenters expressed concerns about ensuring that teacher and principal privacy is protected in publicly reporting data and information for these proposed indicators. In general, these commenters asserted that information that is personally identifiable must be protected and not made publicly available. In support of this assertion, one commenter stated that reporting personally identifiable information may violate employment laws, and another stated that reporting such information is prohibited by a court ruling in the commenter's State. Other commenters asserted or suggested that reporting personally identifiable information unfairly affects teachers and principals in small and rural LEAs.

Discussion: We agree that teacher and principal privacy must be protected and will provide guidance to States on publicly reporting data and information for these indicators in a manner that achieves the twin goals of optimized reporting and protection of personally identifiable information.

Changes: None.

Comment: One commenter requested clarification as to whether and how the requirements of the Family Educational Rights and Privacy Act (FERPA) apply to the public reporting of data and information for the proposed indicators.

Discussion: The requirements of FERPA apply to the disclosure of information from education records of students. They do not address disclosure of information in records relating to the employment of teachers and principals and, thus, do not apply to the collection and public reporting of data and information for new Indicators (a)(3) through (a)(7) (proposed Indicators (a)(2) through (a)(6)).

Changes: None.

Comment: One commenter noted that teacher evaluations are typically performed by principals and claimed that collecting and publicly reporting the data and information for proposed Indicators (a)(3) and (a)(4) would have the unintended consequence of principals providing all teachers with the same rating out of fear of public scrutiny.

Discussion: We believe that concern over this potential consequence is outweighed by the value to stakeholders and other interested parties of making the data and information for these indicators publicly available. In addition, we question whether this concern is warranted, as a public observer would typically expect to see variation in ratings according to performance and, accordingly, would be struck by a decision to provide all teachers with a uniform rating.

Changes: None.

Comment: One commenter requested clarification as to whether the collection and public reporting of data for the proposed indicators on the ratings of teachers (proposed Indicators (a)(3) and (a)(4)) would apply only with respect to teachers who meet the definition of ''highly qualified teacher.''

Discussion: The collection and public reporting of data for these indicators applies with respect to all teachers who receive ratings from the evaluation systems, not just to those who are highly qualified.

Changes: None.

Comment: One commenter requested clarification as to how full-time equivalent teachers should be calculated for purposes of reporting data on the proposed indicators on the ratings of teachers.

Discussion: In reporting data for these indicators, teacher ''head counts'' should be used rather than full-time equivalent counts. In other words, data should be reported for each teacher who receives a rating from the evaluation system regardless of the full-time or part-time status of that teacher.

Changes: None.

Comment: Regarding the indicator on whether the number and percentage of teachers rated at each performance rating or level are available for each school in the LEA in a manner easily accessible and a format easily understandable by the public (proposed Indicator (a)(4)), one commenter requested clarification on the meaning of ''in a manner easily accessible and a format easily understandable by the public.'' Specifically, the commenter sought clarification as to whether this phrase meant that, to respond affirmatively to this indicator, the data for an LEA must be made available in multiple languages.

Discussion: The Department did not intend by the referenced phrase to require the reporting of data in multiple languages. To clarify the Department's intent, we are revising new Indicator (a)(5) (proposed Indicator (a)(4)) to require States to indicate, for each LEA, whether teacher performance data are publicly reported for each school in the LEA, consistent with the definition of *publicly report* that we have established in this notice. Accordingly, this indicator concerns whether such data are made available to anyone with access to an Internet connection without having to submit a request to the entity that maintains the data and information in order to access that data and information.

Changes: We are revising new Indicator (a)(5) (proposed Indicator (a)(4)) to require States to indicate, for each LEA, whether teacher performance data are publicly reported for each school in the LEA, consistent with the definition of *publicly report* that we have established in this notice.

Education Reform Area (b)—Improving the Collection and Use of Data

Indicator (b)(1)

General

Comment: Numerous commenters opposed the proposed requirement that States have in place, as soon as possible but no later than September 30, 2011, a statewide longitudinal data system (SLDS) that contains all of the elements described in section 6401(e)(2)(D) of the America COMPETES Act (COMPETES Act). They described the deadline as arbitrary and unrealistic, and indicated that it would not allow States sufficient time to plan, develop, and implement a system that includes valid and reliable data.

The commenters presented various arguments why States would not be able to meet this deadline. One commenter indicated that States would need more time to build teacher knowledge, support, and trust around the implementation of an SLDS. Another commenter emphasized that the Department should consider that it takes time to collaborate and build trust among the various stakeholders involved with such systems. Another argued that States would be unable to meet the deadline because Federal law does not currently authorize the sharing of data between K–12 and postsecondary systems. Finally, several commenters indicated that States would not have the financial resources necessary to develop and implement an SLDS by the September 30, 2011 deadline.

Some commenters suggested alternative deadlines for the establishment of an SLDS. A few of these commenters argued that the Department should establish deadlines on a State-by-State basis, taking into consideration a State's current progress in developing such a system. Others argued that States that have received an award under the Department's SLDS grant program should be permitted to abide by the implementation timeline under that program. One commenter recommended accelerating the deadline to September 30, 2010 to ensure that States comply with the requirement before the September 30, 2011 deadline for obligating SFSF funds. One commenter argued that data collected as early as 2011 will not reflect the potentially positive impact of SFSF funds on student achievement.

Discussion: The ARRA requires every State receiving SFSF funds to implement an SLDS that contains all of the elements specified in section 6401(e)(2)(D) of the COMPETES Act. While the ARRA does not establish a specific deadline for States to implement such a system, the Department believes that the ability of States to collect and analyze data is vital to advancing essential education reforms. As a result, the Department is encouraging States to implement an SLDS as soon as possible and is requiring that they do so no later than September 30, 2011. The Department believes that two years is sufficient time for each State to implement fully an SLDS, including to consult with key stakeholders, regardless of how many of the required elements it currently has in place. We do not agree that the timeline should be shortened, recognizing that the full development and implementation of these systems, in many cases, could not be accomplished in less than a year.

To meet the costs of developing and implementing an SLDS, States have available a number of resources. States may use the Government Services funds they have received under SFSF and funds awarded under the Department's SLDS Grant program. States may also use funds they receive under the Race to the Top Fund to develop and implement an SLDS.

Federal law does not prohibit the sharing and use of data between K–12 and postsecondary systems, provided that certain Federal requirements are met, so there is no reason to extend the deadline on that basis. Elsewhere in this section, we provide a fuller discussion of issues relating to data sharing and student privacy.

Changes: None.

Comment: One commenter suggested that the Department consider using the Data Quality Campaign's (DQC) collection efforts on statewide longitudinal data systems in order to minimize the State reporting burden and consider pre-populating the SFSF reporting tool with the information reported to DQC.

Discussion: The Department appreciates DQC's role in collecting and analyzing information on States' efforts in developing statewide longitudinal data systems. The information States voluntarily collect and provide to the DQC is valuable in measuring States' progress on SLDS development and should facilitate States' ability to report the requirements in the SFSF. The Department, however, is not using the data provided by States through the annual DQC survey for several reasons. First, DQC's survey does not fully align with the elements specified in the COMPETES Act. Second, we do not believe it is appropriate to rely on data collected by a third party to confirm States' efforts with respect to the

development and implementation of an SLDS that includes all of the elements specified in the COMPETES Act. Finally, we note that if States are collecting and providing this information to the DQC, it should not pose much additional burden on States to provide similar information to the Department.

Changes: None.

Comment: Some commenters urged the Department to focus on both governance and implementation of an SLDS to ensure meaningful data may be accessed by teachers and administrators to inform decisions and instruction. One commenter noted that access and use by teachers and administrators are key elements in the development of an SLDS. A few commenters requested that the Department provide guidance on how, in establishing an SLDS, a State should address such issues as governance, professional development, security, identity management, process controls, operations, and sustainability.

Discussion: When developing their plan for developing and implementing an SLDS, we encourage States to consider not only the technical requirements, but also governance issues, administrative needs, and access and use by practitioners. The Department agrees that successful management is important in establishing an SLDS that will be used effectively. The Department encourages each State to describe in its plan how it will address governance and management issues in the development and implementation of its SLDS.

To assist in system design and development, the National Center for Education Statistics (NCES) has posted standards and guidelines at the following Web site: *http://nces.ed.gov/Programs/SLDS/standardsguidelines.asp.* The NCES handbooks available at this Web site include schemas of the Schools Interoperability Framework Association and the Postsecondary Electronic Standards Council, the National Education Data Model of the National Forum on Education Statistics, the data glossary of NCES' Integrated Postsecondary Education Data System, and others. Work is currently underway to create comprehensive standards and guidelines for use by States to promote data quality and interoperability of data systems both within States and across States. The NCES site will be modified, as appropriate, to include up-to-date resources.

Changes: None.

Comment: A few commenters expressed concern that the notice did not address the role of professional development as a key component of implementing an SLDS and recommended that the Department require States to address the provision of professional development in their plans. Commenters also noted that addressing professional development needs in order to ensure that an SLDS is used effectively by teachers will result in additional financial burden on the States.

Discussion: The Department agrees that professional development plays a key role in ensuring that teachers and administrators are prepared to use the SLDS effectively to improve teaching and learning. The Department encourages a State to consider the professional development needs of educators when preparing its plan for implementing its SLDS. We encourage States and LEAs to use all appropriate funding sources, including those identified earlier, to support their efforts, including efforts to provide professional development.

Changes: None.

Comment: One commenter expressed concern that there were not adequate incentives for IHEs to provide the data needed for inclusion in an SLDS. One commenter stated that LEAs and States should coordinate efforts in developing an SLDS so that compatible systems are established and so that LEAs do not develop data systems that are incompatible with the SLDS.

Discussion: A high-quality SLDS containing data on students from pre-K through postsecondary education should benefit IHEs as well as LEAs and elementary and secondary schools. In developing its SLDS, a State should consult with IHEs, LEAs, and other appropriate stakeholders to ensure that the SLDS meets the needs of these various entities. Inasmuch as each State's governor assured in the State's SFSF Phase I application that the State would develop an SLDS, the governor is in a unique position to bring all of these stakeholders together to collaborate on SLDS development and implementation.

Changes: None.

Comment: Some commenters suggested that the Department provide guidance to States on how they might work together on the development of an SLDS, especially with regards to reporting data on students who move across State lines or students from the State who attend an out-of-State IHE or school. A few commenters also requested that the Department identify or develop grant opportunities that encourage States to work together to create compatible data systems. Another commenter suggested that the Department establish a uniform methodology and clearinghouse for data-sharing among State agencies.

Discussion: The Department encourages States to work together and share best practices in creating and implementing their SLDSs, in particular with respect to the reporting of data for students from the State who attend out-of-State IHEs or schools or students who have moved across State lines. We note that the Department has proposed, for the Race to the Top Fund, to establish an invitational priority for States that propose to work together to adapt one State's statewide longitudinal data system so that it may be used, in whole or in part, by other State(s), rather than having each State build or continue building its system independently. The Department will consider issuing guidance to States on ways they can collaborate with each other in developing these systems.

The Department does not plan to establish a uniform methodology and clearinghouse for data sharing among the States because the Department's goal is to assist States in developing individual data systems that can provide important data at the State, LEA, and school levels.

Changes: None.

Comment: One commenter claimed that the Department's proposal requires States to align all courses with a common core curriculum. This commenter requested that in establishing final requirements for the SFSF program, the Department reconsider the date by which States must implement an SLDS and allow States time to establish common standards and update their SLDS with those standards so as not to duplicate effort.

Discussion: The Department is not requiring that a State align all courses with a common core curriculum or that a State use a common set of standards in its SLDS. Under the ARRA, States receiving SFSF funds must establish and implement an SLDS that includes all 12 elements required under the America COMPETES Act, but these elements do not include alignment with a common core curriculum. While the Department encourages State participation in the development of common internationally benchmarked standards and assessments, we believe that the implementation of a high-quality SLDS need not wait for those activities to be completed.

Changes: None.

Compliance With the Family Educational Rights and Privacy Act

Comment: Some commenters questioned whether establishing and implementing an SLDS in the manner proposed in the NPR would violate State and Federal law, including FERPA. In this regard, a number of commenters noted that some of the Department's past interpretations of FERPA may pose a barrier to States' ability to establish an SLDS that contains all 12 COMPETES Act elements and still comply with FERPA. One commenter requested that any data collection that violated FERPA or other Federal law be deleted from the indicators and descriptors.

Many commenters supported the Department's commitment in the NPR to provide guidance regarding statewide longitudinal data systems and FERPA. The commenters suggested that the Department provide guidance or clarity on such issues as the ability to collect, report, audit, and share information between State agencies.

Discussion: The establishment of a statewide longitudinal data system with the necessary functionality to incorporate all 12 of the COMPETES Act elements, by itself, does not violate FERPA. The actual implementation of such a system (including the disclosure and redisclosure of personally identifiable information from education records) also does not violate FERPA provided that States follow FERPA's specific requirements. In the following sections, in response to specific questions from commenters, we provide greater detail about how an SLDS may be established and implemented in compliance with FERPA. The Department is not aware of any other Federal laws that would prohibit or pose barriers to a State establishing an SLDS.

To the extent that State laws present barriers to the development of an SLDS in compliance with the ARRA, the State will likely need to take specific actions to address those barriers. As part of its application, each State will identify any obstacles, including legal barriers, that may prevent it from implementing an SLDS by the September 30, 2011 deadline. The Department will provide further clarification in this area as warranted.

Changes: None.

Comment: Some commenters expressed concerns that the requirement to collect and report student data from out-of-State IHEs would violate FERPA. A few commenters asked the Department to provide guidance on how States can collect data on remedial coursework on students who attend out-of-State or private IHEs.

Discussion: Proposed Indicator (c)(13) would have requested that States collect and report college course completion data for students who enroll in a public IHE, whether or not the IHE is in-State or out-of-State. We recognize that collection of data from out-of-State IHEs in a FERPA-compliant manner could be burdensome on States and, therefore, are revising this Indicator to provide that States need only collect and publicly report these data from public IHEs within the State. We also encourage States to consult the NCES Web site for further assistance in developing statewide longitudinal data systems. This Web site can be accessed at *http://nces.ed.gov/dataguidelines/.*

Changes: We have modified new Indicator (c)(12) (proposed Indicator (c)(13)) to require that States provide college course credit data only for students enrolled in public in-State IHEs.

Comment: One commenter suggested that, because States may collect data only for those students who approve the release of their student records, the data would not be reliable.

Discussion: As discussed in more detail later in this section, under various exceptions in FERPA, a State may collect and disclose student-level data for the purpose of evaluating education programs and improving instruction without prior written student or parent consent. Moreover, the Department is not asking States to collect data only for those students who approve the release of information from their student records.

Changes: None.

Comment: Several commenters recommended that the Department clarify whether States have the authority under FERPA to share data between pre-kindergarten-through-grade-12 (pre-K–12) and postsecondary data systems, particularly with respect to the requirements in new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) that States collect and report student-level college enrollment and course completion information. One commenter specifically asked whether a State educational agency (SEA) may access postsecondary education records of former students without explicit student permission.

Discussion: As stated earlier, the establishment of a statewide longitudinal data system with the necessary functionality to incorporate all 12 of the COMPETES Act elements, including the sharing of data between pre-K–12 and postsecondary data systems, by itself, does not violate FERPA. States also may implement an SLDS that includes the disclosure and redisclosure of personally identifiable information from education records in a manner that complies with FERPA.

We first address the question of the disclosure and redisclosure of personally identifiable information in the pre-K context. The disclosure of personally identifiable information from pre-K programs to LEAs is not affected by FERPA with respect to pre-K programs that do not receive funding from the Department, as FERPA does not apply to those programs. With respect to pre-K programs that receive funding from the Department, the non-consensual disclosure of personally identifiable information from the students' pre-K education records to LEAs is permitted under the enrollment exception in the FERPA regulations, provided that certain notification and access requirements are met (20 U.S.C. 1232g(b)(1)(B); 34 CFR 99.31(a)(2) and 99.34).

The second issue raised by commenters involves the sharing of information between postsecondary institutions and SEAs. Similar to the pre-K context, the non-consensual disclosure of personally identifiable information from K–12 education records to a postsecondary institution is permitted under the enrollment exception, provided the notification and access conditions are met. A postsecondary institution may disclose personally identifiable information to an SEA under the evaluation exception if the SEA has the authority to conduct an audit or evaluation of the postsecondary institution's education programs (20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5); 34 CFR 99.31(a)(3) and 99.35). States that have not established the requisite authority may do so in a number of ways, such as (1) creating an entity in the State to house the SLDS and endowing that entity with the authority to conduct evaluations of elementary, secondary, and postsecondary education programs, or (2) granting authority at the SEA or IHE level to conduct evaluations of elementary, secondary, and postsecondary education programs. States may grant authority through various vehicles, including, for example, executive orders, regulations, and legislation. In some States, the formation documents for SEAs, IHEs, or other educational entities may already grant the necessary authority.

The Department recognizes that there is considerable variation among States' governance structures and laws, and that in some States using the evaluation exception to obtain personally identifiable information from

postsecondary institutions may be difficult. The Department is currently reviewing its regulations and policies in this area and will be in close communication with States over the next several months regarding these issues. Of course, the Department also is available, upon request, to provide States with technical assistance on how to implement an SLDS that meets the requirements of FERPA.

Changes: None.

Comment: One commenter encouraged the Department to revisit FERPA interpretations related to SLDSs, including on the issue of sharing data between SEAs and State workforce agencies.

Discussion: Under current Department regulations, FERPA prevents SEAs and LEAs from non-consensually disclosing personally identifiable information from education records to State workforce agencies. However, the sharing and reporting of personally identifiable information from education records in de-identified form is permissible under FERPA (*see* 34 CFR 99.31(b)). Furthermore, the reporting of individually identifiable data by a State agency that does not maintain education records is not covered by FERPA inasmuch as FERPA applies only to the disclosure of student-level data *from* education records. In other words, because the data maintained by a workforce agency is not in an education record, FERPA does not apply and, accordingly, does not present a barrier to the disclosure of such data by State workforce agencies to educational agencies, to IHEs, or to the State agency that maintains the SLDS.

Changes: None.

Comment: One commenter requested that the Department clarify its position on the National Student Clearinghouse's ability to verify college enrollment and course completion data.

Discussion: To the Department's knowledge, while the National Student Clearinghouse does have the capacity to verify student enrollment, persistence, and graduation data for the vast majority of IHEs, it does not collect course completion data.

Changes: None.

America COMPETES Act Elements

Comment: One commenter recommended that we define what it means for students to transition successfully from secondary school to postsecondary education, which is one of the elements for an SLDS described in the America COMPETES Act. Another commenter outlined challenges in tracking students after they graduate from high school, including difficulty in disaggregating data by subgroups in a manner that is statistically accurate due to the fact that most high school graduating classes have 100 or fewer students.

Discussion: The Department does not have a definition of ''successful transition'' at this time. States and LEAs may use many indicators to determine successful transition, which may include the ability to transition from secondary school to postsecondary school within four to six years, an analysis of trends in student demographics, program participation rate, courses taken or passed as they relate to participation in remediation programs in postsecondary education settings, time needed to graduate, and differences in retention and persistence in community colleges versus four-year institutions.

As discussed previously, to assist in SLDS design and development, NCES has posted standards and guidelines at the following Web site: *http://nces.ed.gov/Programs/SLDS/standardsguidelines.asp*. The NCES handbooks available at this Web site include schemas of the Schools Interoperability Framework Association and the Postsecondary Electronic Standards Council, the National Education Data Model of the National Forum on Education Statistics, the data glossary of NCES' Integrated Postsecondary Education Data System, and others. Work is currently underway to create comprehensive standards and guidelines for use by States in promoting data quality and interoperability of data systems both within States and across States. The NCES site will be modified, as appropriate, to include up-to-date resources.

Changes: None.

Comment: One commenter requested that the Department provide its long-term expectations regarding the higher education data elements of an SLDS so that States may set up their systems to meet those goals and any future requirements. One commenter recommended that the Department publish criteria to judge the efficacy of SLDSs.

Discussion: As noted previously, work is underway to create comprehensive standards and guidelines for use by States to promote data quality and interoperability of data systems that span early childhood through postsecondary education. The NCES site referenced previously will be modified, as appropriate, to include up-to-date resources.

Changes: None.

Comment: Two commenters recommended that the Department clarify whether the requirement in the COMPETES Act that the SLDS have the capacity to communicate with higher education data systems means data integration or two-way communications. Another commenter asked whether these data can be merged for program evaluation and policy analysis purposes.

Discussion: The COMPETES Act specifies that an SLDS have the capacity to communicate with higher education data systems. Therefore, statewide longitudinal data systems should have the ability to link an individual student record from one system to another. Additionally, these systems should meet interoperability and portability standards, which will ensure that the systems provide timely and reliable opportunities to share data across different sectors within a State and across States. Timely and reliable information from across sectors will facilitate the evaluation of which program or combinations of programs is improving outcomes for students.

Changes: None.

Comment: One commenter expressed concern that the requirement that the SLDS communicate with postsecondary education data systems does not account for students who choose a postsecondary path other than higher education (*i.e.*, military or employment credentials). Another commenter recommended that the Department collect data on students who enter the workforce or apprenticeship programs, or follow some form of career and technical training path after high school.

Discussion: The Department acknowledges the importance of collecting data on students who enter careers or technical training upon graduating from high school. However, for the purposes of the SFSF program, the Department has chosen to focus its data collection and public reporting requirements on college enrollment and course completion. The measures included in this notice will allow parents, educators, and other key stakeholders to measure the efficacy of secondary schools in preparing their graduates for success in college. In addition, collecting and publicly reporting data on students entering employment or technical training would be extremely complex and burdensome on States.

Changes: None.

Comment: One commenter recommended that the Department require States to include in their SLDS an additional data element on the rate of out-of-school suspensions and

expulsions. The commenter also suggested that the Department make the existing data collected by the Department's Office for Civil Rights (OCR) publicly available.

Discussion: We do not believe it is necessary to require States to include in their SLDS an additional element on suspension and expulsion rates. The ARRA requires only that States implement an SLDS that contains the elements described in the America COMPETES Act. We believe that requiring States to include this additional element in their systems would be unduly burdensome.

The Department's Civil Rights Data Collection is publicly available on the Department's Web site at *http://www.ed.gov/about/offices/list/ocr/data.html*.

Changes: None.

Comment: One commenter urged the Department to clarify whether a student identifier must include pre-K students if a State is to meet the requirement that an SLDS include a unique statewide identifier that does not permit a student to be individually identified by users of the system. The commenter also requested that the Department clarify that use of such an identifier would only be required where information is being disclosed for research and analytical purposes and would not apply to providing student data to teachers. One commenter requested clarity on whether the definition of ''preschool'' included only publicly operated preschools, or also publicly funded preschools and non-publicly funded private preschools.

Discussion: For purposes of developing an SLDS that includes the elements described in the America COMPETES Act, a State will need to provide students enrolled in Federally and State-supported early learning programs with a unique identifier that will follow each student through the pre-K–12 system. This requirement applies only to Federally and State-supported preschools, not private preschools.

Changes: None.

Comment: One commenter suggested that the requirement in the COMPETES Act that an SLDS contain student-level information about the points at which students exit, transfer in, transfer out, drop out, or complete pre-K–16 education programs should be expanded to include information on re-enrolled students.

Discussion: The ARRA specifically requires States receiving SFSF funds to develop and implement statewide longitudinal data systems that contain the elements identified in the America COMPETES Act. Accordingly, the language concerning this element that we included in the NPR is taken directly from the America COMPETES Act. The Department does not wish to add SLDS requirements that are not in the COMPETES Act.

Changes: None.

Comment: One commenter recommended that the Department eliminate the COMPETES Act requirement that an SLDS include student-level transcript information, including information on courses completed and grades earned. The commenter said that the commenter's State does not have a standard grade scale and, accordingly, the data would be meaningless.

Discussion: The Department does not have the authority to change the elements for an SLDS identified in the COMPETES Act.

Changes: None.

New Indicator (b)(3) (Proposed Indicator (b)(2))

Comment: A few commenters voiced concerns about the effect that implementation of the indicators in education reform area (b) would have on teacher privacy. One commenter requested that the Department develop guidance on teacher privacy and teacher identifier systems, including guidance on preventing unauthorized access to teacher information. The commenter recommended that teachers' identities be available only to their supervisors. One commenter recommended that the Department require States to describe how they will protect teacher confidentiality.

Discussion: The Department agrees that teacher and principal privacy must be protected. However, teacher and principal privacy is governed by State law. States, LEAs, and schools should consider their individual State statutes and policies regarding teacher and principal privacy when establishing an SLDS. As discussed in the *Education Reform Area (a)—Achieving Equity in Teacher Distribution* section of this notice, the Department will provide guidance to States on how States should address teacher and principal privacy issues when publicly reporting performance evaluation data in response to the relevant indicators in education reform area (a).

Changes: None.

Comment: Many commenters requested that the Department clarify the meaning of the term ''individual teacher impact'' in new Indicator (b)(3) (proposed Indicator (b)(2)). Of these, several expressed concerns about the difficulty in producing data that could reliably account for the complexity of factors that affect teacher impact. One commenter was specifically concerned with the requirement that States provide estimates of individual teacher impact by the proposed deadline of September 30, 2011; this commenter suggested that States instead be required to report longitudinal statistics focusing on teacher-student information and develop a timeline and plan for implementing a measure of teacher impact on student learning. One commenter did not support the use of State assessments to determine teacher impact and recommended that the data be used to inform program evaluation and professional development.

Another commenter expressed concerns about using value-added measures to compare schools across a State because the overall teacher quality in schools varies. In addition, one commenter expressed concerns about limitations in using value-added measures in schools with a highly mobile student population because class size may be too small to make accurate assessments of teacher impact. Another commenter cited challenges that States face in developing systems that provide estimates of teacher impact because there are only a few providers currently available to assist States in the development of these systems.

Many commenters requested that we clarify the meaning of the term ''student achievement'' in new Indicator (b)(3) (proposed Indicator (b)(2)). One commenter suggested that the Department require States to indicate whether they provide student performance data to teachers for every subject and grade level in which the State administers assessments.

Discussion: The Department acknowledges that few providers are currently available to support States in the development of systems that provide estimates of teacher impact and that the use of such systems is an evolving field. For these and the following reasons, the Department is adding new Indicator (b)(2) and changing proposed Indicator (b)(2) (new Indicator (b)(3)) to clarify the requirement that a State provide estimates of teacher impact.

The Department agrees with the commenter who suggested that a State report longitudinal statistics focusing on teacher-student information. Therefore, the Department is adding new Indicator (b)(2) requiring a State to indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State

administers assessments in those subjects, in a manner that is timely and informs instructional programs.

The Department also acknowledges financial and institutional challenges States face in establishing a system through which teachers are provided estimates of their individual impact on student achievement in a manner that is timely and informs instruction. However, the Department believes reports of individual teacher impact on student achievement may be a valuable tool to States, LEAs, and teachers. Appreciating that this is a goal that States should work towards in the future, the Department is revising proposed Indicator (b)(2) (new Indicator (b)(3)) to require a State to indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement. The Department is also revising the State Plan requirements with respect to proposed Indicator (b)(2) (new Indicator (b)(3)) to require that, if a State does not currently provide reports of teacher impact, it is required to submit a plan on how it will do so in the future; we are not requiring, however, that a State do so by any specific date.

The Department is also revising new Indicator (b)(3) (proposed Indicator (b)(2)) to clarify that, for the purpose of providing reports of teacher impact on student achievement, ''student achievement'' is measured in terms of student performance on assessments the State administers pursuant to section 1111(b)(3) of the ESEA. Thus, we are using this term in new Indicator (b)(3) (proposed Indicator (b)(2)) differently than our use of the term *student achievement outcomes*, which is used in the indicators relating to teacher and principal performance evaluation systems in education reform area (a).

The Department will provide guidance on the use of term ''teacher impact.''

Changes: New Indicator (b)(2) requires that each State indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.

New Indicator (b)(3) (proposed Indicator (b)(2)) has been revised to require each State to indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. In addition, we are revising the State Plan requirements for new Indicator (b)(3) (proposed Indicator (b)(2)). For new Indicator (b)(3) (proposed Indicator (b)(2)), a State must indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. If the State does not provide those teachers with such reports, it must submit a plan for how it will develop and implement the means to do so.

Comment: One commenter noted that only 21 States currently report the ability to connect student and teacher data. Several individual States commented on their own limitations in linking teachers to individual students. One commenter noted that although the State can provide data linking student performance to teachers, LEAs would have to grant teachers access to the data.

Discussion: The Department acknowledges that some States have several of the COMPETES elements in place and other States have only a few. However, in the SFSF Phase I application, each State Governor committed to establishing, consistent with the requirements of the ARRA, an SLDS with all 12 elements described in the America COMPETES Act, including a teacher identifier system that enables the State to match teachers to students.

FERPA allows the nonconsensual disclosure of personally identifiable information (PII) from student records to school officials with a legitimate educational interest in the data. In general, this means that individuals in an LEA, including teachers, would need access to PII from a student's education records in order to perform their professional responsibilities. Schools should have in place criteria for appropriate ''school officials'' and ''legitimate educational interest'' and should include this information in the annual notification to parents of their rights under FERPA. Criteria for appropriate ''school officials'' and ''legitimate educational interest'' should reflect the need for teachers and school administrators to have access to PII from the SLDS to facilitate the continuous improvement of education outcomes for students.

Changes: None.

Comment: One commenter expressed the concern that States would not be able to provide teachers with the results of student assessments in time to inform instruction. Another commenter expressed concerns about the ability of teachers to use the data to inform instruction if they have no prior assessment results to serve as a basis of comparison.

Discussion: We agree that the student growth data and teacher impact reports provided under new Indicator (b)(2) and new Indicator (b)(3) (proposed Indicator (b)(2)) are unlikely to lead to timely changes in day-to-day instruction. However, the Department believes that even if student growth data or teacher impact reports are not available to teachers until the end of the school year or the beginning of the following school year, they can still be a valuable tool for supporting instructional programs. For example, a teacher receiving student growth data at the end of the year may adjust instructional strategies the following year based on weak assessment results by students in the prior year. Concurrently, the teacher in the subsequent grade could use the data to identify areas of remediation to address with incoming students.

As a result, the Department is adding new Indicator (b)(2) to require a State to indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs (rather than instruction). We are also removing the phrase ''in a manner that is timely and informs instruction'' from new Indicator (b)(3) (proposed Indicator (b)(2)).

Additionally, because States do not administer summative assessments in all grades or subjects, the requirements apply, at a minimum, to teachers in those tested grades and subjects.

Changes: New Indicator (b)(2) requires that each State indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.

New Indicator (b)(3) (proposed Indicator (b)(2)) has been revised to require each State to indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments.

Comment: Several commenters expressed support for proposed Indicator (b)(2) (new Indicator (b)(3)) but recommended that the Department add an indicator on principals' and district administrators' ability to collect, manage, and analyze data to improve instruction and decision making.

Discussion: While the Department encourages States to provide supports and strategies to district administrators and principals on collecting, managing, and analyzing data to improve instruction and decision making, the Department believes that adding additional indicators and requiring additional information would add unnecessary burden for States.

Changes: None.

Comment: One commenter recommended that the Department encourage States to provide principals with a data ''dashboard'' that includes information on student achievement, attendance, and credit completion, and other student data that can be linked to individual teachers. Several commenters expressed concerns about how States will measure or ensure teachers' use of student data, with some commenters recommending that the Department include an indicator requiring a State to describe how it will provide data to teachers and monitor teachers' use of the data.

Discussion: While the Department encourages States to collect information beyond that required through this notice, we believe that the current data requirements are sufficient for the purposes of the SFSF program and that additional requirements would be unnecessarily burdensome on States.

Changes: None.

Education Reform Area (c)—Standards and Assessments

General

Comment: One commenter indicated that, in light of variances in State accountability systems, it is difficult to compare student achievement levels across States. The commenter noted that comparing assessment data across States may give the false impression that students in one State are underperforming when the opposite may be true.

Discussion: The Department agrees with this comment and encourages States to collaborate in developing common, internationally benchmarked standards and assessments. In the meantime, collecting information on student college enrollment and persistence rates (new Indicators (c)(11) and (c)(12)) (proposed indicators (c)(12) and (c)(13)) will provide meaningful data on how schools, districts, and States are preparing their students for postsecondary success.

Changes: None.

Comment: One commenter requested that the Department define what is meant by the term ''high-quality'' as applied to State assessments and indicate whether any States meet that standard. The commenter also requested that the Department clarify the relationship between individual State assessments and internationally benchmarked common assessments. The commenter further requested that the Department clarify how the requirement to enhance current State assessments is affected by efforts to develop common State assessments.

Discussion: By ''high-quality assessments'' the Department means those assessments that have been peer reviewed and approved by the Department. While the Department is encouraging the development of common State assessments that are aligned with common, internationally benchmarked student achievement standards, we believe that it is critical for States to continue to ensure that their current assessments are of high quality and rigorous.

Changes: None.

Indicator (c)(1)—Confirmation of Approval Status

Comment: A few commenters recommended that the Department clarify, with respect to Indicator (c)(1), whether a State that does not have a fully approved system of standards and assessments and that has entered into a compliance agreement with the Department is eligible for SFSF Phase II funding.

Discussion: Under the authority in section 457 of GEPA (20 U.S.C. 1234f), the Department has entered into compliance agreements with certain States with respect to their assessment systems. These agreements enable States to remain eligible to receive funding under Part A of Title I of the ESEA while coming into full compliance with the Title I standards and assessment requirements. A State that is operating under such a compliance agreement will not be denied SFSF Phase II funding solely due to the existence of such a compliance agreement. A State in this situation must still meet the Phase II SFSF application requirements to receive funding. The approval status of a State's assessment system will not affect its eligibility for SFSF funding.

Changes: None.

Comment: One commenter recommended that the final notice clarify how the commenter's State could confirm the approval status of its State assessment system, as determined by the Department, given that it has submitted data to the Department on its science assessments and is awaiting a decision on those assessments.

Discussion: Indicator (c)(1) requires each State to confirm the approval status, as determined by the Department, of its assessment system with respect to reading/language arts, mathematics, and science assessments. To comply with this indicator, a State merely confirms the approval status of its assessment system (*i.e.,* ''Full Approval,'' ''Full Approval with Recommendations,'' ''Approval Expected,'' ''Approval Pending,'' or ''Approval Pending, Compliance Agreement''). The fact that a final determination has not been made concerning a State's science assessments would not preclude a State from confirming its most current approval status.

Changes: None.

Proposed Indicator (c)(2) and Proposed Descriptor (c)(1)—Enhancing Assessments

Comment: One commenter recommended that the Department remove the indicators in education reform area (c) related to current State assessment systems in light of the efforts that States are making toward creating and implementing common, internationally benchmarked standards and assessments. Other commenters supported proposed Indicator (c)(2) (and proposed Descriptor (c)(1)), which would require a State to indicate whether it is engaged in activities to enhance the quality of its academic assessments. These commenters urged the Department also to collect additional data about the alignment among standards, assessments, professional development, instructional materials, accommodations for students with disabilities, and accommodations for students with limited English proficiency.

Discussion: As a condition of receiving SFSF funds, a State assures, among other things, that it will enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA. The indicators in this education reform area require States to be transparent on the current status of their efforts to provide rigorous, high-quality standards and assessments. The Department acknowledges that many States are working in collaboration or in consortia with other States or organizations to improve the quality, validity, and reliability of their standards and assessments. In recognition of States'

efforts to develop common standards and assessments, the Department does not believe it is necessary to collect additional information on the steps that States may be taking to enhance their current State assessments. The Department believes that the peer review of State assessments provides sufficient information on State efforts to enhance those assessments.

While the Department strongly encourages States to take steps to align and publicly report the alignment of their standards, assessments, professional development, instructional materials, accommodations for students with disabilities, and accommodations for students with limited English proficiency, the Department believes that the current indicators are sufficient for the purposes of this program.

Changes: The Department has removed proposed Indicator (c)(2) and Descriptor (c)(1). With the removal of this indicator and descriptor, we have renumbered the remaining indicators and descriptors in this education reform area.

New Indicator (c)(3) (Proposed Indicator (c)(4))—Alternate Assessments for Students With Disabilities

Comment: One commenter recommended adding language on the validity and reliability of assessments for students with disabilities to proposed Indicator (c)(4), which requires States to confirm whether the State's alternate assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards.

Discussion: Section 1111(b)(3)(A) of the ESEA requires each State to implement a set of high-quality student academic assessments. As further required in section 1111(b)(3)(C)(iv), such assessments must be of adequate technical quality for each purpose required under the ESEA. Each State has submitted to the Department for peer review and approval its regular and alternate assessments. This peer review includes a rigorous evaluation of the validity and reliability of each assessment, including all alternate assessments. Thus, if a State's alternate assessments for students with disabilities are determined to have met the statutory and regulatory requirements through the Department's peer review process, those assessments would necessarily be valid and reliable assessments. Accordingly, it is not necessary to add language to new Indicator (c)(3) (proposed Indicator (c)(4)) on the validity and reliability of assessments for students with disabilities.

Changes: None.

New Indicators (c)(4) and (c)(6) (Proposed Indicators (c)(5) and (c)(7))—Appropriateness and Effectiveness of Accommodations

Comment: Several commenters recommended that the Department remove new Indicators (c)(4) and (c)(6) (proposed Indicators (c)(5) and (c)(7)), which ask each State to indicate whether it has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides, for assessment purposes, to students with disabilities and students with limited English proficiency, respectively. These commenters noted that this analysis was already performed as part of the peer review process.

Discussion: The Department believes that States should regularly analyze the appropriateness and effectiveness of their assessment accommodations to ensure that the assessments fully address the needs of students with disabilities and limited English proficient students. The Department agrees that the peer review process includes a rigorous analysis of the appropriateness and effectiveness of assessment accommodations. Thus, a State that has submitted its assessment system to the Department for peer review within the last two years, or that has engaged in an alternative rigorous analysis of its assessment accommodations during this timeframe, should be able to respond to these indicators affirmatively.

Changes: None.

Comment: One commenter expressed concern that proposed Indicators (c)(5) and (c)(7) will lead to an expectation that each State complete an analysis of the accommodations it provides to students with disabilities and students with limited English proficiency for assessment purposes.

Discussion: Section 1111(b)(3)(A) of the ESEA requires each State to implement a set of high-quality student academic assessments. This requirement includes appropriate and effective accommodations for students with disabilities and students with limited English proficiency. The Department, therefore, encourages regular review of accommodations that are part of State assessment systems.

Changes: None.

Comment: A few commenters requested that the Department clarify whether the analysis of the appropriateness and effectiveness of the accommodations referenced in proposed Indicators (c)(5) and (c)(7) could be done by other States or organizations.

Discussion: For purposes of these indicators, the analysis could be done by other States or organizations. It is not necessary for each State to have undergone a Departmental peer review of its assessment system within the past two years.

Changes: None.

Comment: One commenter recommended that the Department publish criteria that States would use to review the appropriateness and effectiveness of accommodations for students with disabilities.

Discussion: Section 1111(b)(3)(A)(ix)(II) and (III) of the ESEA requires each State to ensure that students with disabilities and students with limited English proficiency, respectively, have access to appropriate accommodations necessary to measure the academic achievement of those students. Element 4.6 in the Department's peer review guidance provides the criteria the Department uses to determine whether States have complied with these requirements.[6] States may use these criteria to guide any analysis of assessment accommodations that are conducted outside the Department's peer review process.

Changes: None.

Comment: A few commenters requested that the Department require States to describe the accommodations available to students with disabilities. One of these commenters recommended that the Department require States to submit data on the number and percentage of students afforded each accommodation.

Discussion: In their assessment manuals, States include information on the accommodations available to students with disabilities. States post these manuals on their Web sites to ensure transparency and accountability for all students.

With regard to reporting the number and percentage of students afforded each accommodation, while each student's Individualized Education Program lists the accommodations to be provided to that student, States are not required by law to aggregate and report the number and percentage of students afforded each accommodation. The regulations in 34 CFR 300.160(f) require that States report to the public, among other things, the following: (1) The number of students with disabilities who participate in the general (regular) assessments, (2) the number of students

[6] This guidance is available at *http://www.ed.gov/policy/elsec/guid/saaprguidance.pdf.*

with disabilities provided accommodations (that did not result in an invalid score) to participate in general assessments, and (3) the number of students with disabilities who participate in alternate assessments based on grade-level, alternate, or modified academic achievement standards. We do not believe that further reporting with respect to each type of accommodation provided is warranted for the purposes of the SFSF program.

Changes: None.

Comment: A few commenters requested that States be required to describe the accommodations provided to students with limited English proficiency for assessment purposes. One of these commenters also recommended that States provide data on the number and percentage of students afforded each accommodation.

Discussion: Information on accommodations offered to limited English proficient students is already available in State assessment manuals, which States make publicly available. Requiring States to report on the number and percentage of students with limited English proficiency who receive each type of accommodation would impose significant additional burden on States and LEAs. The Department does not believe that the additional data sought by these commenters are warranted for the purposes of the SFSF program.

Changes: None.

Comment: One commenter inquired whether the data required under proposed Indicator (c)(7) are already provided by States through the Department's Education Data Exchange Network (EDEN). Another commenter requested that we clarify whether the analysis referenced in this indicator should be done at the State level or at the student level.

Discussion: The data that the Department will be collecting under new Indicator (c)(6) (proposed Indicator (c)(7)) are not reported through EDEN. Under this indicator, the Department is asking each State whether, within the last two years, it has performed a State-level analysis of its assessment accommodations for limited English proficient students. This analysis is not required at the student level.

Changes: None.

New Indicator (c)(7) (Proposed Indicator (c)(8))—Native Language Assessments

Comments: Several commenters opposed this indicator, stating that the Department does not have the authority to require native language assessments or that it improperly implies that such assessments are required or preferred.

Discussion: New Indicator (c)(7) (proposed Indicator (c)(8)) merely requires a State to confirm whether or not it is administering native language versions of State assessments, as approved by the Department, for limited English proficient students. The indicator does not suggest that the use of native language assessments is the best or only way of meeting the needs of limited English proficient students, and it is not intended to require States to use such assessments.

Changes: None.

Comment: One commenter recommended that the Department add an indicator or descriptor that would require States to list languages spoken by one percent or more of students in the State for whom translations of State assessments are provided or not provided.

Discussion: Because native language versions of State assessments are not required under the ARRA or the ESEA, the Department does not agree that this additional information should be collected as part of the SFSF Phase II application.

Changes: None.

Comments: Several commenters suggested that the Department require States to provide additional data demonstrating that the needs of limited English proficient students are being met. For example, one commenter recommended that proposed Indicator (c)(8) be broadened to include other ways of gauging a student's mastery of content and English. Another commenter suggested that the indicator be changed to require States to provide data on the percentage of limited English proficient students using native language versions of State assessments and, of this group, the percentage of students who are also receiving content instruction in their native language. A third commenter recommended that States be required to provide their process for classifying students as limited English proficient students. This commenter requested that the Department modify the SFSF Phase II requirements to require States to identify the types of valid and appropriate assessments that are available for these students. This commenter also suggested that States be required to describe the instructional practices and programs that are approved for teaching limited English proficient students.

Discussion: The Department agrees with these commenters about the importance of providing limited English proficient students with appropriate and effective instruction and assessment accommodations and supports. While the recommended modifications might provide more detailed information on the extent to which States are meeting the needs of these students, for the purposes of this program, the Department believes that new Indicators (c)(6), (c)(7), and (c)(8) (proposed Indicators (c)(7), (c)(8), and (c)(9)) will provide sufficient data in this area without imposing undue burden.

Changes: None.

New Indicators (c)(10), (c)(11), and (c)(12) (Proposed Indicators (c)(11), (c)(12), and (c)(13))—High School Graduation Rate Data and Postsecondary Enrollment and Attainment

Comments: Numerous commenters urged the Department to expand the reporting requirements in proposed Indicators (c)(11), (c)(12), and (c)(13) pertaining to high school graduation, college enrollment, and course completion to account for high school graduates who choose a path other than higher education. Several commenters argued that the scope of the proposed data collection is too narrow and suggested, for example, that the Department foster the collection of data on career readiness in addition to college readiness.

Discussion: The Department recognizes the value of alternative career pathways separate from higher education, and seeks in no way to minimize the accomplishments of individuals or States with regard to students who pursue successful careers immediately after high school through military service, career and technical education programs, or full-time employment. However, as discussed earlier, we have a particular interest in collecting information on college readiness (as an indicator of the strength of States' secondary education standards and programs) and have chosen, for the purposes of this program, to limit the burden of our reporting requirements accordingly.

Changes: None.

Comment: Many commenters stated that collecting the proposed student enrollment and course completion data would be very burdensome, time-consuming, and costly for States. Some of these commenters suggested that the indicators are unlikely to produce meaningful data. Others noted that the requirements would negatively affect students by taking valuable resources from the classroom.

Discussion: The Department acknowledges the challenges that the postsecondary data collection and

public reporting requirements present. However, we believe that collecting and publicly reporting these data will provide States, LEAs, and schools with information they need in order to continuously improve elementary and secondary education. The Department recognizes that tracking credits earned by students enrolled in private IHEs or in out-of-State IHEs is particularly challenging. Given that the majority of high school graduates enroll in an in-State IHE, and that the majority of enrollment in degree-granting institutions is in public institutions, the Department believes that at this time States should be required to collect course completion data only for students who enroll in an in-State public IHE. These data should provide an accurate reflection of the strength of States' secondary education standards and programs.

Changes: The Department has revised proposed Indicator (c)(13) (new Indicator (c)(12)) to require a State to provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.

Comment: In the background to the section of the NPR discussing the indicators and descriptors relating to standards and assessment requirements, the Department included references to both college education and technical training. The background discussion indicated that a State would be required to provide data on the extent to which students graduate from high school in four years with a regular high school diploma and pursue a college education or technical training. One commenter noted that none of the proposed indicators specifically referenced ''technical training'' and recommended that the Department delete the phrase unless the requirements of the program also reflect career or technical training.

Discussion: The Department recognizes the importance of technical training and believes it is an important option for many students. However, the Department is not requiring States to provide data on students who enroll in training programs. The Department believes that this additional collection requirement would impose an undue burden on States due to the wide range of technical training programs from which data would be required. Moreover, the Department believes that the college readiness data required under new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) are sufficient to provide a sound measure of the strength of secondary education standards and programs.

Changes: The Department has not included references to ''technical training'' in the final requirements.

Comments: One commenter asserted that States will need vendor services in order to track student enrollment, persistence, and remedial course work and suggested that States would have to rely on too few vendors during a short time period to provide the data under proposed Indicators (c)(12) and (c)(13).

Discussion: The Department believes that obtaining data on student enrollment and course completion in IHEs for these indicators will provide stakeholders with critical information on the effectiveness of secondary education across States. The Department believes that States will be able to obtain the assistance they may need to meet the requirements of new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) through available data sources such as the National Student Clearinghouse.

Changes: None.

Comment: Some commenters requested that the Department remove inconsistencies between the student subgroups identified for reporting in the SFSF NPR and the student subgroups identified for reporting in the notice of proposed priorities, requirements, definitions, and selection criteria for the Race to the Top Fund.

Discussion: The proposed requirements under the Race to the Top Fund included a requirement to disaggregate student data according to the subgroups required under the National Assessment of Educational Progress (NAEP) for some items and the subgroups required under section 1111(b)(2)(C)(v)(II) of the ESEA for others. For Phase II of SFSF, we proposed that States be required to disaggregate data by the subgroups in section 1111(b)(2)(C)(v)(II) of the ESEA.

The Department is making every effort to unify requirements across programs, particularly across ARRA programs, whenever possible. NAEP presents data by a number of ''student groups,'' including gender, race or ethnicity, highest level of parental education, and type of school (public or private). Additional questionnaires also provide information on student course-taking, home discussions of school work, and television-viewing habits. By statute, the Department requires States to disaggregate State assessment data for adequate yearly progress (AYP) determinations by economically disadvantaged status, race/ethnicity, disability, and English language proficiency (section 1111(b)(2)(C)(v)(II)). State report cards must report assessment data disaggregated by gender, race/ethnicity, English language proficiency, migrant status, disability status, and economic advantage status, unless such disaggregation would reveal personally identifiable student information (section 1111(b)(3)(C)(xiii)). Under 34 CFR 200.19(a)(4)(i), with respect to high school graduation rates, the Department requires that data be disaggregated by the subgroups in section 1111(b)(2)(C)(v)(II) of the ESEA. Because new Indicator (c)(10) (proposed Indicator (c)(11)) addresses graduation rates, the subgroups identified in section 1111(b)(2)(C)(v)(II) of the ESEA are the most appropriate.

Changes: None.

Comment: One commenter stated that the timeline for States to report graduation rate data under proposed Indicator (c)(11) using a four-year adjusted cohort graduation rate appears to be inconsistent with the timeline in the Title I regulations.

Discussion: New Indicator (c)(10) (proposed Indicator (c)(11)) requires States to provide, for the State, for each LEA in the State, and for each high school in the State, data disaggregated by student subgroup on the number and percentage of students who graduate from high school using the four-year adjusted cohort graduation rate as required by the Title I regulations in 34 CFR 200.19(b). Under the Title I regulations, the four-year adjusted cohort graduation rate must be reported at the State, LEA, and high school levels, as well as disaggregated by each subgroup described in section 1111(b)(2)(C)(v)(II) of the ESEA, beginning with report cards providing results of assessments administered in the 2010–2011 school year. The Department does not believe that the timeline for reporting under new Indicator (c)(10) (proposed Indicator (c)(11)) is inconsistent with the Title I regulations because those regulations do not specify a date by which the four-year adjusted cohort graduation rate for school year 2010–2011 must be reported. We believe that States should have the capacity to publicly report these data by September 30, 2011, as required in this notice.

Changes: None.

Comment: Numerous commenters questioned why the Department is collecting data only on the basis of a four-year adjusted cohort graduation rate and requested that the Department amend proposed Indicator (c)(11) to take into consideration extended-year adjusted cohort graduation rates. Several of the commenters indicated that use of the adjusted four-year cohort graduation rate fails to take into account legitimate reasons a student might take more than four years to graduate. One commenter suggested adding a new indicator that collects at the State, LEA, and high school levels, as well as disaggregated by subgroups, data on the number and percentage of students who graduate from high school using an extended-year adjusted cohort graduation rate as approved by the Department.

Discussion: The reporting of data using a four-year adjusted cohort graduation rate, which States must uniformly implement as required in the Title I regulations, helps ensure that there is an accurate method of comparing graduation rate data across States. Without such comparability, it is difficult to measure adequately how well schools, LEAs, and States are doing in addressing the educational needs of high school students. Thus, for the purposes of this program, the Department is requiring the collection and public reporting of graduation rate data only using the four-year adjusted cohort graduation rate.

Changes: None.

Comment: One commenter suggested that, in directing States to submit graduation rate data under proposed Indicator (c)(11), the Department establish an ''n size'' (minimum subgroup size) for reporting so that student data are not personally identifiable.

Discussion: When presenting disaggregated data, States, LEAs, and schools are responsible for ensuring that they do not reveal personally identifiable information about individual students. As part of its approved Consolidated State Application Accountability Workbook (Accountability Workbook) under Title I, each State has identified a minimum number of students for reporting purposes. These established minimum subgroup sizes are to be used in reporting the graduation rate data under new Indicator (c)(10) (proposed Indicator (c)(11)).

Changes: None.

Comment: One commenter recommended that the Department consider whether there are ways to better align college admissions requirements with student performance expectations. The commenter asserted that such alignment could more accurately assess the extent to which postsecondary students require remediation. The commenter argued that the extent to which college students require remediation is largely within the control of IHEs because IHEs establish admissions requirements. Further, this commenter contended that those IHEs with no or low admissions requirements will likely have to provide more remediation.

Discussion: The Department acknowledges that IHEs, in some respects, may have control over the extent to which their students require remediation. The Department encourages States to involve IHEs in the process of aligning pre-K–12 standards, curricula, and assessments so that students are better prepared for college.

Changes: None.

Comment: A few commenters encouraged the use of college entrance exams (such as SATs and ACTs) or NAEP data to demonstrate whether high school standards and assessments are appropriately aligned to facilitate college and career readiness. One commenter requested that the Department gather information on whether graduation requirements align with evidence of college and work readiness. This commenter requested that the Department also require States to report, and disaggregate by subgroups, the number and percentage of students who earn two-year and four-year degrees at IHEs in three and six years, respectively.

Discussion: While we recognize the value of college entrance test data, the Department believes that new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) will provide data that accurately and sufficiently reflect the strength of secondary education standards and programs. In addition, not all IHEs require entrance exams as a prerequisite for admission. With respect to using NAEP data to validate State assessments, the Department affirms the utility of comparing NAEP scores but notes that the NAEP is not administered annually to high school students. In addition, we recognize that data on the number and percentage of students who earn two-year and four-year degrees within three and six years, respectively, would be a reliable measure of the strength of secondary education. However, the Department seeks to minimize the burden on States and believes that the postsecondary enrollment and course-completion indicators in new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) will address the underlying issue the commenters raised—namely, how well high schools are preparing students for college.

Changes: None.

Comments: Numerous commenters opposed proposed Indicator (c)(12), regarding the number of students who graduate from high school and enroll in an IHE, claiming that the data collection would be too costly, unreliable, or impractical to conduct at this time. One commenter had specific concerns about the costs of obtaining enrollment data on students who attend private or out-of-State IHEs.

Discussion: College enrollment data will help measure the extent to which secondary schools have prepared their students for colleges and universities. While difficult to quantify, the benefits associated with collecting these data should outweigh the costs.

Changes: None.

Comment: One commenter requested that the Department clarify which entity in the State (elementary or secondary school or IHE) will be responsible for reporting on proposed Indicators (c)(12) and (c)(13).

Discussion: States are responsible for collecting and publicly reporting these data and should implement the collection of these data in the manner that is most effective for each State.

Changes: None.

Comment: None.

Discussion: In light of the number of recent high school graduates who engage in experiential learning or other activities during the year immediately following their high school graduation, the Department believes it is important to collect data on students who enroll in an IHE even if they do not do so immediately after receiving a regular high school diploma. Collecting data on students who enroll in an IHE within sixteen months of obtaining a regular high school diploma will more accurately reflect the effectiveness of secondary education.

Changes: The Department has revised new Indicator (c)(11) (proposed Indicator (c)(12)) to require a State to provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage who enroll in an IHE (as defined in section 101(a) of the HEA) within 16 months of receiving a regular high school diploma.

Comment: One commenter requested that, in order to measure students'

academic readiness for postsecondary-level work, the Department require States to collect both aggregated and disaggregated information on students who are placed in one or more remedial courses during their first year of enrollment in an IHE.

Discussion: The Department included new Indicator (c)(12) (proposed Indicator (c)(13)) in order to provide a measure of students' college readiness. Remedial courses generally do not result in credit toward a degree, the type of credit measured by this indicator.

Changes: None.

Comment: A few commenters requested that the Department define the term ''one-year's worth of college credit'' in proposed Indicator (c)(13).

Discussion: There is considerable variation among IHEs about what it means to complete at least one year's worth of college credit. As a result, it would not be feasible to establish a uniform definition of this term at this time. The Department believes that permitting each public IHE to define this term in a manner consistent with its own academic requirements will not only minimize the reporting burden on the IHEs and States, but will result in meaningful data on student progress toward a college degree.

Changes: None.

Comment: Several commenters suggested that proposed Indicators (c)(12) on college enrollment and (c)(13) on course completion raise potential FERPA issues and requested that the Department provide guidance around creating a FERPA-compliant pre-K–16 data system. The commenters sought additional guidance regarding the authority to share data between pre-K–12 and postsecondary data systems, especially where the systems are administered by separate State agencies.

One commenter specifically suggested that the Department provide States with flexibility to set data aggregation and masking standards to avoid reporting of small data cells that could identify an individual student. The commenter suggested that the Department consider collecting data aggregated at a higher level.

Discussion: As stated earlier in response to the comments on implementing an SLDS that is compliant with FERPA, establishment of a statewide longitudinal data system with the necessary functionality to incorporate all 12 of the COMPETES Act elements, including the sharing of data between pre-K–12 and postsecondary data systems does not by itself violate FERPA. States also may implement an SLDS that includes the disclosure and redisclosure of personally identifiable information from education records in a manner that complies with FERPA. The non-consensual disclosure of personally identifiable information from K–12 education records to a postsecondary institution is permitted under the enrollment exception, provided the notification and access conditions are met. Postsecondary institutions may disclose personally identifiable information to an SEA under the evaluation exception if the SEA has the authority to conduct an audit or evaluation of the postsecondary institution's education programs. (20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5); 34 CFR 99.31(a)(3) and 99.35).

The Department is not requiring States to report student data that would reveal personally identifiable information. In reporting data under new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)), States should use the minimum subgroup sizes that are part of their approved Accountability Workbooks under Title I.

Changes: None.

Comment: One commenter recommended that the Department strengthen the metrics regarding standards and assessments by adding an indicator on the number and percentage of students in each grade who are enrolled in and successfully complete a college- or career-ready high school curriculum (aligned with college- and career-ready standards), disaggregated by subgroup and reported at the State, district, and school levels.

Discussion: The Department recognizes the value of this information but believes that the indicators on the adjusted four-year cohort graduation rate, college enrollment, and college course completion are sufficient to obtain data on elementary/secondary education and on postsecondary outcomes. Given these other indicators, the Department does not believe that the additional burden that would result from the suggested indicator is warranted.

Changes: None.

Comment: Several commenters requested that the Department require States to collect and report data on the percentage of students who earn college credit during their first year of college. These commenters indicated that such data more accurately predict degree completion.

Discussion: The Department's requirement that States collect data on the number and percentage of high school graduates who complete at least one year's worth of college credit within two years of enrollment in the IHE will capture data on students who earn college credit during their first year of college. The Department acknowledges the value of data on college credit earned during their first year of college but recognizes that students may attend college part-time and prefers to establish a requirement that more flexibly accounts for a broader spectrum of situations.

Changes: None.

Comment: None.

Discussion: New Indicator (c)(11) (proposed Indicator (c)(12)) requires States to report, for the State, and for each LEA and high school in the State, disaggregated data on the number and percentage of high school graduates who enroll in an IHE within 16 months of receiving a regular high school diploma. New Indicator (c)(12) (proposed Indicator (c)(13)) requires States to report, for the State, and for each LEA and high school in the State, disaggregated data on the number and percentage of those graduates who complete at least one year's worth of college credit within two years of enrollment at a public IHE in the State. States are required to identify graduates using a four-year adjusted cohort graduation rate. The Department recognizes that many States will be unable to report on postsecondary enrollment and attainment of high school graduates consistent with the four-year adjusted cohort rate by September 30, 2011. Therefore, the Department has modified the plan requirements for new Indicators (c)(11) and (c)(12).

Changes: The Department has modified the plan requirements for new Indicators (c)(11) and (c)(12). These requirements now provide that the State is required to, at a minimum, possess the ability to collect and publicly report the data. As a result, the requirements of paragraph (a) of the *Plan Requirements* section of this notice apply to these indicators, at a minimum, with respect to the State's development of the means to collect and to publicly report the data. Accordingly—

(1) If, for either of these indicators, a State will develop *but not implement* the means to collect and publicly report the data (i.e., the State will not collect and publicly report the data) by September 30, 2011, the State—

(i) May submit a plan with respect to the indicator that addresses the requirements of paragraph (a) only with respect to the State's development of the means to collect and to publicly report the data, and not the State's implementation of those means; and

(ii) If submitting a plan in this manner, must include in its plan a description of the evidence it will

provide to the Department of Education, by September 30, 2011, to demonstrate that it has developed the means to collect and publicly report that data.

(2) If, however, for either of these indicators, a State will develop *and implement* those means (*i.e.,* the State will collect and publicly report the data) by September 30, 2011, the State must submit a plan with respect to the indicator that fully addresses the requirements of paragraph (a).

Education Reform Area (d)—Supporting Struggling Schools

Introduction

A central purpose of ARRA funds is to increase the academic achievement of students in struggling schools. As a result, the NPRs regarding the State Fiscal Stabilization Fund, the Race to the Top Fund, and the School Improvement Grants each included requirements related to struggling schools. The most explicit requirements were included in the SIG NPR that was published in the **Federal Register** on August 26, 2009 (74 FR 43101), in which the Department proposed four rigorous school intervention models—turnaround, restart, school closure, and transformation—that an LEA seeking SIG funds would implement in the lowest-achieving Title I schools in improvement, corrective action, or restructuring identified by each State and could also implement in secondary schools that are eligible for, but do not receive, Title I funds. Commenters on each notice recommended that the Department make the identity of, and requirements for, struggling schools consistent among all three programs. We agree with these comments and, in response, have revised the four school intervention models and are integrating them into the criteria, definitions, and requirements for all three programs. In addition, we have developed a definition of *persistently lowest-achieving schools* to substitute for ''schools in the lowest-achieving five percent'' (SFSF) and *persistently lowest-performing schools* (Race to the Top) for use in all three programs.

Because both the SFSF and Race to the Top notices of final requirements are being published prior to the final SIG notice, we are publishing, in final, the requirements for the four models in SFSF, will append them to Race to the Top, and will incorporate them into the final SIG notice when it is issued. In order to clarify and fully explain the definition of *persistently lowest-achieving schools* and the changes that we made to the four models, we are including in this notice the comments and responses related to the definition and those models from the SIG NPR. In the following sections, we first discuss the comments we received on struggling schools in response to the SFSF NPR and our responses. We then discuss the comments we received related to the definition and the four intervention models as proposed in the SIG NPR and our responses to those comments.

Persistently Lowest-Achieving Schools

Comment: Some commenters expressed support for our proposal in education reform area (d) that States identify and support schools that are not meeting student achievement goals, but a number of commenters expressed concern that the proposed indicators in this reform area would not result in the correct identification of those schools. Many commenters were specifically concerned that high schools might not be identified among the lowest-achieving schools. One commenter argued that the strategies for turning around struggling high schools may differ from strategies for turning around other schools and that the data for the proposed indicators for education reform area (d) should be disaggregated by school type and grade span so that high schools are reported separately. Several commenters recommended broadening the definition of *lowest-achieving five percent* to include both Title I and non-Title I secondary schools with reasonably high scores on assessments but low graduation rates in an effort to better identify struggling schools. One commenter recommended that high schools with graduation rates below 60 percent be added to proposed indicators (d)(3) through (d)(5) to better identify low-achieving high schools.

Discussion: The Department agrees that it is important to identify the lowest-achieving schools in each State so that parents, policy-makers, and other stakeholders can take appropriate action and measure the progress made in improving the achievement of students who attend those schools. We also agree that strategies and approaches to reform schools may vary according to school type and grade span. The Department agrees that the proposed definition of *lowest-achieving five percent* of schools might fail to identify some struggling secondary schools, including those whose students are performing adequately on State assessments but are failing to graduate.

Changes: The Department has removed the definition of *lowest-achieving five percent* and added a new definition for the term *persistently lowest-achieving schools.* This term is defined as follows:

With respect to the requirements that a State collect and publicly report data and information on the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring or secondary schools that are eligible for, but do not receive, Title I funds, *persistently lowest-achieving schools* means, as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

(b) To identify the lowest-achieving schools, a State must take into account both—

(i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's approved assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

We have added a new Descriptor (d)(1), which requires States to provide their definition of *persistently lowest-achieving schools* (consistent with the requirements for defining this term set forth in this notice) that the State uses to identify such schools.

We also have made two additional changes to education reform area (d) that require States to report on reform efforts in secondary schools. We have revised Indicator (d)(5) to require States to provide, for the State, the number and identity of the schools that are secondary schools that are eligible for, but do not receive, Title I funds that are identified as persistently lowest-achieving schools. We have added new

Indicator (d)(6), which requires States to provide, for the State, of the persistently lowest-achieving schools that are secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year.

Comment: With respect to Indicator (d)(3), one commenter questioned the value of requiring States to collect data on schools in improvement status in addition to schools identified for corrective action and restructuring. The commenter further questioned whether the additional collection of information is necessary to focus on the lowest-achieving five percent.

Discussion: In order to remain consistent with school reform strategies that States are implementing using funds available under section 1003(g) of the ESEA (School Improvement Grants), the Department chose to collect data on schools in improvement status. It is important to capture information regarding all schools that are persistently lowest-achieving schools in the State, including those in improvement.

Because the Department believes that States should place a priority on reforming the persistently lowest-achieving schools, we are requiring States to collect and publicly report information only on the intervention strategies in those schools and not on every school in improvement, corrective action, or restructuring.

Changes: Indicator (d)(3) has been revised to require States to provide, for the State, the number and identity of Title I schools in improvement, corrective action, or restructuring that are identified as persistently lowest-achieving schools. Indicator (d)(4) has been revised to require the State to provide, for the State, of the persistently lowest-achieving Title I schools in improvement, corrective action, or restructuring, the number and identity of those schools that have been turned around, restarted, closed, or transformed (as defined in this notice) in the last year.

Comment: One commenter questioned the usefulness of the stratification in proposed Indicators (d)(3), (d)(4), and (d)(5) and recommended creating a new indicator that provides the identity and grade levels of the schools identified for improvement, corrective action, or restructuring and the lowest-achieving five percent of schools in the State.

Discussion: The Department agrees that identifying schools and providing greater disaggregation of data required on the persistently lowest-achieving schools provides greater transparency and more information that is useful to parents, educators, and other stakeholders.

Changes: As noted in the previous responses, a new definition of *persistently lowest-achieving schools* has been added and Indicators (d)(3), (d)(4), and (d)(5) have been revised to require States to provide the number and identity of the schools being reported under these indicators. We also have removed the requirement that States report the percentages for these schools.

Comment: One commenter requested that the Department provide States with the flexibility to determine which schools are struggling.

Discussion: We believe that the definition of *persistently lowest-achieving schools* that we have established in this notice provides States with flexibility in identifying these schools while setting forth basic parameters for States to follow in developing their definitions. The SFSF definition and requirements for persistently lowest-achieving schools and school intervention models will now be consistent with those in the Race to the Top notice and the upcoming School Improvement Grants notice; this consistency may encourage and enable States to use diverse funding sources to accomplish consistent goals. We encourage States to think comprehensively across these programs in order to develop plans that best target and meet the needs of their persistently lowest-achieving schools.

Changes: None.

Comment: One commenter expressed concern that State-by-State comparisons will not identify the lowest-achieving schools in the Nation.

Discussion: The purpose of the data collection and public reporting requirements in education reform area (d) is not to provide a list of the lowest-achieving schools in the Nation. Rather, the Department intends that the required data collection and public reporting will provide transparency on the persistently lowest-achieving schools in each State. This will allow parents, students, and educators in each State to make informed decisions and implement reform strategies that will work best for their individual situations.

Changes: None.

The Four Intervention Models

Comment: Some commenters objected to our proposed definitions of the intervention models (turnaround, school closure, consolidation) used in Indicators (d)(3), (d)(4), and (d)(5). These commenters argued that the definitions are overly restrictive and lack a sufficient research base. Also, several commenters expressed a belief that the definition for a school that has been turned around is too restrictive. Many of these commenters recommended that States be given a broader range of options for choosing intervention models and that the data collection requirements be expanded to require States to report on other models that have been used to assist struggling schools.

Discussion: The Department recognizes that there are reform models and other intervention efforts not identified in the NPR that can be successful in turning around struggling schools. We also understand that no single reform model will be effective in every State or every LEA. However, the intervention strategies proposed in the NPR focus on dramatic change, including significant changes in leadership, staffing, and governance, and as they are targeted to the Nation's persistently lowest-achieving schools, which in most cases have not responded to multiple earlier school improvement and turnaround efforts. Research indicates that fundamental, comprehensive changes in leadership, staffing, and governance hold the greatest promise for bringing about the improvements in school structure, climate, and culture that are required to break the cycle of chronic educational failure. We believe that the reform models proposed in the NPR hold great promise in their ability to turn around the Nation's persistently lowest-achieving schools and that they are flexible enough to allow States and LEAs to adapt them to meet their specific needs. As noted earlier, to be consistent with the definitions and requirements in the School Improvement Grants notice and to encourage and enable States to plan effectively across these programs, these indicators, descriptors and definitions, where appropriate, have been revised. Specifically, we have added a fourth model, the transformation model, and revised and clarified requirements in the turnaround, restart, and school closure models.

At this time, the Department declines to require States to collect data on other reform models as we believe that these hold the most potential for turning around struggling schools.

Changes: We have revised the definitions of the intervention models as detailed in the *Final Definitions* section of this notice.

We have revised Indicator (d)(4), which requires States to provide, for the State, of the persistently lowest-achieving schools that are Title I schools

in improvement, corrective action, or restructuring, the number and identify of those schools that have been turned around, restarted, closed, or transformed in the last year.

We have added new Indicator (d)(6), which requires States to provide, for the State, of the persistently lowest-achieving schools that are secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year. With the addition of new Indicator (d)(6) and the addition of several new indicators regarding charter schools, we have renumbered the indicators in this education reform area.

Comment: A few commenters stated that the proposed models for intervening in struggling schools are process or structural reforms rather than results-based approaches focusing on gains in student achievement. They believe that the collection of data will provide information only on where reform efforts have occurred, not on the success of those efforts.

Discussion: The Department believes that if the four reform models established in this notice are implemented effectively, they will lead to gains in student achievement. In addition, via ED*Facts* the Department collects data on Title I schools in improvement, corrective action, or restructuring and on whether those schools have improved student achievement outcomes to a point that they are no longer classified in those categories. The Department does not, therefore, believe it is necessary to collect such data through these requirements.

Changes: None.

Comment: A few commenters recommended that the Department add an indicator that would require States to report the number of Title I schools in restructuring in the last five years for each LEA and, for these schools, also report the number that have been turned around with new leadership and a majority of new staff, the number that have been turned around through conversion to charter schools, and the number that have been closed and the students placed in higher-performing schools.

Discussion: The Department currently collects, through its ED*Facts* data system, information on the number and identity of Title I schools in improvement, corrective action, or restructuring in each State. Through the SFSF Phase II application, States will report publicly on the types of reforms implemented in persistently lowest-achieving schools, which are the schools most in need of the types of interventions included in this notice and the schools on which States and LEAs should be focusing their reform efforts. Accordingly, we do not think it is necessary to establish the additional reporting requirements suggested by the commenters.

Changes: None.

Comment: One commenter recommended that States report the name and number of all schools eligible for and receiving Title I funds by grade span.

Discussion: The Department currently makes public information regarding the name and number of Title I-eligible schools by grade span in the Common Core of Data (CCD). We believe that the data available in the CCD, combined with the information that States will report under this notice, is sufficient to enable parents, educators, and other stakeholders to judge State and local reform efforts.

Changes: None.

Comment: One commenter argued that closing schools in some rural areas is not an option due to an already difficult time that districts have in recruiting and retaining highly qualified staff.

Discussion: We agree that not all reform models are appropriate in all circumstances. As States and LEAs work to implement reforms in the persistently lowest-achieving schools, they should exercise great care in determining exactly which reforms actions to implement in which schools. This notice includes three intervention models (turnaround, restart, and transformation) that do not require the closing of a school.

Changes: None.

Schools That Have Been Turned Around

Comment: Some commenters expressed concern that the use of the phrase *schools that have been turned around* implies improvement in academic results in a formerly low-performing school. Commenters recommend restricting the use of the term ''turned around'' to circumstances in which States can demonstrate significant improvement in student achievement. Further, the commenters recommended defining this model as ''major reform actions'' or ''school that has undertaken a turn-around strategy.''

Discussion: The Department appreciates the commenters' concern that the term *schools that have been turned around* implies an outcome rather than an input. The term ''turnaround'' has several meanings, but we believe that this notice clearly uses it to describe a process for improving student achievement in a persistently lowest-achieving school.

Changes: None.

Comment: Several commenters expressed concern regarding the requirement that one element of the turnaround model is the replacement of at least 50 percent of the existing staff. Several commenters indicated that the 50 percent figure is arbitrary. A few commenters stated that there is a lack of existing research that supports the assertion that a certain percentage of staff need to be replaced in order to successfully turn around a school. Several commenters recommended that the definition not include a specific percentage. One commenter recommended that, under this model, all teachers should be required to reapply for a teaching position with the new school leadership having the authority to rehire teachers regardless of seniority or tenure. Another commenter expressed concern that replacing a majority of staff may not be the most effective approach for every school; the new school leadership may determine, after an evaluation of existing staff, that less than a majority be replaced to support the turn-around effort. One commenter recommended that schools operating under this model should be required to retain at least 50 percent of current qualified staff.

Discussion: The Department recognizes that replacing leadership and staff is one of the most difficult aspects of the school turnaround option. However, we also believe that in our lowest-performing schools, many of which have failed to improve despite repeated turnaround efforts, dramatic and wholesale changes in leadership and staffing can be the key to creating the new climate and culture needed to break the cycle of educational failure. Moreover, the required turnaround option leaves room to accommodate many of the flexibilities suggested by these commenters. For example, a principal has the option of retaining roughly half of existing staff who are deemed effective and who commit to supporting other key elements of the school's turnaround plan. With regard to the comment that new school leadership have the authority to rehire teachers regardless of seniority or tenure, the Department believes such issues are best resolved at the State and local levels in the context of existing collective bargaining agreements; however, in schools implementing a turnaround model, the principal must be provided with sufficient operational flexibility, including in making staffing

decisions, to implement fully a comprehensive approach to substantially improving student achievement outcomes. Finally, the Department would like to make clear that the turnaround option is only one of four reform models outlined in this notice. If a school determines that the requirements of a turnaround model are too restrictive, the LEA may choose to implement another reform model in the school.

Changes: The definition of a *turnaround model* has been revised to require that the principal be given sufficient operational flexibility, including in selecting staff, to implement fully a comprehensive approach to substantially improving student achievement outcomes.

Comment: One commenter recommended that States be encouraged to develop or support programs for rigorous preparation for principals who are hired to turn around a school.

Discussion: We agree that principals need rigorous preparation and support in order to achieve results in persistently lowest-achieving schools. We encourage States and LEAs to work with existing, or develop new, principal and school leadership programs that ensure adequate preparation and ongoing support for principals working in persistently lowest-achieving schools. We decline in this notice to require such actions of States because the purpose of this notice is to have States collect and publicly report data, not to establish professional development policies.

Changes: None.

Schools That Have Made Progress

Comment: A few commenters expressed concern that the proposed definition of *schools that have made progress* will not provide information on whether schools are improving student achievement. The commenters stated that this definition assumes that, on average, rates in reading and mathematics are improving from year to year. Commenters noted that, while this is true in many States, proficiency rates in some States have been nearly flat or have declined from year to year. A few commenters recommended that the Department require States to report the average statewide gains used to determine whether schools meet the definition of making progress in reading/language arts and mathematics. Commenters recommended that the definition stipulate that gains in the ''all students'' category be greater than zero and, for schools identified in the ''all students'' category, that the gains in the ''all students'' category be equal to or greater than the average gains of schools in the State in the ''all students category.'' Additionally, several commenters expressed concern that underperformance by subgroups could go unchecked. Some commenters recommended that the definition of a school that has made progress require gains for the subgroup or subgroups that are equal to or greater than the average gains of schools in the State in the ''all students'' category, and that are greater than zero. Another commenter recommended changing the phrase ''in the 'all students' category (as under section 1111(b)(2)(C)(v)(I) of ESEA'' to ''in the 'all students' and 'subgroups' categories (as under section 1111(b)(2)(C)(v) of ESEA.''

Discussion: We agree that a school that has made progress must demonstrate positive gains. We also agree that, in order to monitor progress on closing the achievement gap the data collection must include measures of subgroup performance and average statewide subgroup performance within the State. The reporting of average statewide gains will provide useful information regarding progress in the State.

Changes: We have revised the definition of *school that has made progress* as follows:

With respect to the requirements that a State collect and publicly report the numbers and percentages of certain groups of schools that have made progress on State assessments in reading/language arts and in mathematics in the last year, *school that has made progress* means a school whose gains on the assessment, in the ''all students'' category and for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA), are equal to or greater than the average statewide school gain in the State on that assessment, in the ''all students'' category and for each student subgroup, except that if the average statewide school gains in the State on that assessment are equal to or less than zero, the gains of the school must be greater than zero.

We also have revised Indicators (d)(1) and (d)(2). Indicator (d)(1) requires that a State provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on the State assessments in reading/language arts and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress (as defined in this notice) on State assessments in reading/language arts in the last year.

Indicator (d)(2) requires a State to provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on State assessments in mathematics and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress on State assessments in mathematics in the last year.

Comment: One commenter asserted that student achievement must be used in conjunction with graduation rates for high schools to ensure that there is no incentive for schools to have low-performing students leave the school prior to graduation. The commenter recommended adding to the definition of *school that has made progress* that a high school must also have made gains in graduating students at a rate that is equal to or greater than the average graduation rate gain of other schools in the State and that the definition of continuous and substantial improvement as defined by the Department in 34 CFR 200.19(b)(1) be met.

Discussion: The Department agrees that all high schools should work to ensure that all of their students are graduating with a regular high school diploma. As a result of our concern over graduation rates, we have chosen, as discussed previously, to require States to collect and publicly report data and information on their persistently lowest-achieving schools . This requirement will capture secondary schools with graduation rates below 60 percent. The Department believes that the changes it has made to the definition of *persistently lowest-achieving schools* sufficiently address the commenters' concern regarding high school graduation rates.

Changes: None.

Comment: A few commenters recommended that those schools in improvement, corrective action, or restructuring determined to be making progress in reading/language arts and mathematics, respectively, be identified by name (in addition to providing the number and percentage of such schools) in the reports States provide under education reform area (d).

Discussion: While we encourage States to identify the schools in improvement, corrective action, or restructuring determined to be making progress in reading/language arts and

mathematics, we do not believe it is necessary to require States to provide these identifications.

Changes: None.

Comment: One commenter expressed concern that the number and percentage of schools that have made progress in reading/language arts and mathematics do not align with current assessment and reporting priorities since student assessments are conducted and reported by grade level. The commenter asked that the Department provide guidance on how States and LEAs should calculate school-level, rather than grade-level, improvement. Similarly, one commenter stated that guidance is needed on how States should calculate the student gains used to determine school progress; otherwise, the commenter said, there will not be a way to meaningfully compare data among States.

Discussion: The Department will provide guidance to States on calculating school-level progress in reading/language arts and mathematics.

Changes: None.

Comment: One commenter recommended that States be required to list the number of schools that have emerged from improvement, corrective action, or restructuring and to describe what activities led to these results.

Discussion: The Department agrees that it is important to make public the identity of schools that have emerged from improvement, corrective action, or restructuring. The data that States will make available under the requirements of this notice will over time provide parents, educators, and policymakers with information on the extent to which States and LEAs have had success in reforming the persistently lowest-achieving schools. Information on the type of reforms implemented in those schools will also be publicly available. However, while we encourage studies on the efficacy of particular reform strategies, we believe that requiring States to conduct such studies is beyond the scope of the SFSF program.

Changes: None.

Comment: One commenter recommended that the Department add an indicator that would provide additional information on the dollar amount and percentage of SFSF funds spent on secondary schools.

Discussion: States will provide quarterly data on the uses of funds appropriated under the ARRA as required by section 1512 of the ARRA. In addition, States will provide an annual report on uses of SFSF funds. These reports will provide a certain amount of information on the uses of ARRA funds. While we believe it would be useful also to require States to collect and publicly report information on expenditure of SFSF funds at the school level, we are mindful here, as in other areas, of the burden of such a requirement on States and LEAs. We, therefore, decline to require further reporting in this area.

Changes: None.

Charter Schools

Comment: As described earlier in this notice, one commenter stated that the Department should require each State to indicate whether the information it reports includes information from charter schools and, if such information is not currently available, require the State to provide information in its State plan on the steps it will take to collect information on charter schools.

Discussion: Under the requirements, States will report information on charter schools that are LEAs in the same manner that they will provide information on any LEA. Further, information on public charter schools that are not LEAs is provided in the same manner as it is for other public elementary and secondary schools.

Additionally, as proposed in the NPR and established in this notice, the Department is requiring States to collect and publicly report information on the number of charter schools that are permitted to operate and that are actually operating in the State (new Indicators (d)(7) and (d)(8)). However, and as discussed in greater detail later in this section, the Department agrees that it is important to collect information on the academic achievement of students who attend charter schools as well and has added new Indicators (d)(9) and (10) that measure the performance of charter school students on State assessments in reading/language arts and mathematics.

Changes: As discussed in more detail later, the Department has added new Indicators (d)(9) and (d)(10) to education reform area (d).

Comment: A few commenters expressed support for proposed indicators (d)(6) through (d)(9). However, many commenters expressed concern over the Department's focus on charter schools. Several commenters objected to the emphasis on charter schools, noting that research suggests that many charter schools perform no better than regular public schools in raising student achievement. A number of commenters believe that these indicators will promote an overemphasis on charter schools while ignoring other alternatives. They urged the Department to focus on other models for turning around schools and to allow States flexibility in determining the best strategies.

Discussion: The Department appreciates the comments in support of the goal of increasing the number of high-performing charter schools as a strategy for both turning around the persistently lowest-performing schools and for increasing the educational options for students attending such schools. The Department recognizes that the available research on the effectiveness of charter schools in raising student achievement is mixed. However, we believe strongly that high-performing charter schools can be especially valuable in communities where chronically low-performing traditional public schools have failed to improve after years of conventional turnaround efforts. In such cases, high-performing charter schools, whether created through the conversion of a traditional public school enrolling the same students or by establishing a new school that provides an alternative to traditional public schools, can offer promising and proven options for breaking the cycle of educational failure. Finally, while we believe in the ability of high-performing charter schools to turn around struggling schools, we do not believe that they are the only reform option. States and LEAs have developed alternative intervention models that have demonstrated success in raising student achievement in low-performing schools. In addition to high-quality charter schools, we encourage the use of these alternatives that have proven to be successful in transforming struggling schools.

Changes: None.

Comment: One commenter questioned why progress information is not required for charter schools when the Department has indicated that it wants to hold charter schools accountable. The commenter proposed a new indicator requiring information on charter school progress in reading and mathematics.

Discussion: We agree that information should be collected on charter school progress in improving student achievement in reading/language arts and mathematics. Charter schools can serve as models for school reform, but it is important that they be held accountable for their performance. Collecting data on charter school progress in reading/language arts and mathematics will provide valuable information on charter school performance.

Changes: Two new indicators have been added to reform area (d) to address charter school progress in reading/language arts and mathematics. New Indicator (d)(9) requires each State to

provide, for the State and for each LEA in the State that operates charter schools, information on the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year. New Indicator (d)(10) establishes the same requirement for State assessments in mathematics.

Comment: A number of commenters asserted that the proposed data collection regarding charter schools would provide only a superficial overview of charter school accountability and success and proposed new indicators to collect additional information. The proposals included collecting information on the charter school application process, the number of charter school applications received each year, and the number of applications approved and denied. The proposed indicators also included collecting data on the extent to which charter schools serve student populations comparable to non-charter public schools in the district, and if a non-charter school was converted to a charter school, the percentage of the former student population the charter school continues to serve. Commenters also suggested collecting data on reform strategies that have been applied to the lowest-achieving charter schools and requiring States that allow charter schools to show evidence of charter school success. Another commenter suggested that all data related to charter schools be disaggregated by subpopulation.

Discussion: By requiring States to publicly report the number of charter schools permitted to operate under State law, the number that are currently operating, the number of charter schools that have closed and the reason for closure, this final notice will ensure parents, policy makers and other stakeholders have access to valuable information on States' charter school laws, operations, and accountability. To ensure greater transparency, States must report this information in each of the last five years instead of, as called for in the proposed requirements, over the last five years.

While we encourage States to collect and publicly report data on the performance of charter schools beyond what is called for in this notice, we believe that the information we are requiring is sufficient for the purposes of this program.

Changes: New Indicators (d)(11) and (d)(12) (proposed Indicators (d)(8) and (d)(9)) require that the information be publicly reported for ''each of the last five years'' as opposed to ''the last five years.''

Comment: One commenter recommended that the Department prohibit charter schools from refusing students based on test scores, special needs, or any other factor.

Discussion: The Department believes that all students should have access to an excellent education. However, State and local governments possess the authority to authorize charter schools and as such, requirements for charter school admissions are primarily State and local matters. Nonetheless, Federal civil rights laws prohibit charter schools (as recipients of Federal funds or as public entities) from discriminating in admissions on the basis of race, color, national origin, sex, or disability.[7] In addition, we note that charter schools receiving funds under the Department's Charter Schools Program (CSP) may set minimum qualifications for admission only to the extent that such qualifications are: (a) Consistent with the statutory purposes of the CSP; (b) reasonably necessary to achieve the educational mission of the charter school; and (c) consistent with civil rights laws and Part B of the Individuals with Disabilities Education Act.[8]

Changes: None.

Comment: One commenter suggested adding ''mismanagement'' to the list of possible reasons a charter school may have closed.

Discussion: While the reasons for charter school closure included in the notice are not meant to be exhaustive, the Department believes that requiring States to report information on the closure of charter schools due to academic, educational or financial reasons captures the vast majority of official 'mismanagement' circumstances that would cause a charter school to close or not be renewed. The Department has provided an ''other'' category to allow for closures not reflected in the choices provided. A State could use that category for schools closed because of other instances of ''mismanagement''.

Changes: None.

Comment: One commenter asked for clarification of which entities would constitute a valid source of information on why a charter school closed.

Discussion: SEAs are ultimately responsible for all schools in the State and as such will be a valid source for why a charter school has closed.

Changes: None.

Comment: One commenter suggested that the Department consider limiting the charter school data collection to such factors as size of enrollment and length of operation. The commenter also recommended that SEAs not be required to collect data on reasons for charter school closures in previous years because some States do not have this information and would be required to collect it retroactively.

Discussion: The Department believes that many States will already have this information. States will need to collect information on charter schools for the purposes of State funding and reporting for LEAs and schools and, in doing so, will likely determine which charter schools have closed. It is also likely that States also collect information on the reasons for closure. Though some States may not currently collect and publicly report this information, the Department believes that it is important that they do so. Understanding the reasons for charter school closures can help States, LEAs, and other stakeholders determine which models of charter schools are effective and eliminate those that are not.

Changes: None.

Comment: One commenter recommended that the Department issue clear reporting guidelines and a standard form for reporting the reasons for charter school closures in order to eliminate potential problems with reporting such data.

Discussion: Policies regarding authorization and closure of charter schools vary greatly from State to State. The Department cannot provide a standard reporting form that would address all of the different issues in each State. We leave the establishment of such guidelines and reporting forms to each State.

Changes: None.

Comment: One commenter asked for clarification regarding our intent when we ask for information regarding ''the number of charter schools currently permitted to operate.''

Discussion: In this section, the Department intends to require States to collect and publicly report information on the number of charter schools currently permitted to operate under State law.

Changes: We have revised new Indicator (d)(7) so that the indicator now reads: Provide for the State and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law.

[7] Additional information on the application of Federal civil rights laws to charter schools is available at *http://www.ed.gov/offices/OCR/archives/pdf/charter.pdf.*

[8] Additional information on the CSP is available at *http://www.ed.gov/programs/charter/legislation.html.*

Comments and Responses on the SIG NPR

As noted earlier, the following discussion summarizes the comments we received, and our responses, on the ''Tier I'' and ''Tier II'' schools proposed in the SIG NPR that are now included in the definition of *persistently lowest-achieving schools.* The discussion also summarizes the comments and our responses on the four school intervention models proposed in the SIG NPR.

Definition of Persistently Lowest-Achieving Schools

Comment: A number of commenters recommended alternatives to the process proposed in the SIG NPR for determining the lowest-achieving five percent of all Title I schools in improvement, corrective action, or restructuring in the State—that is, ''Tier I'' schools. As proposed in the SIG NPR, a Tier I school is a school in the lowest-achieving five percent of all Title I schools in improvement, corrective action, or restructuring in the State, or one of the five lowest-achieving Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater. Under the SIG NPR, to determine this ''bottom five percent,'' a State would have had to consider both the absolute performance of a school on the State's assessments in reading/language arts and mathematics and whether its gains on those assessments for the ''all students'' group over a number of years were less than the average gains of schools in the State for the ''all students'' group.

Several commenters said this proposed process was too prescriptive and recommended that States have more flexibility in determining the lowest-achieving five percent. The commenters specifically suggested permitting States to restrict Tier I schools to schools in restructuring if this group constitutes more than five percent of a State's identified schools; to apply a State's growth model; or to consider such other factors as measures of individual student growth, writing samples, grades, and portfolios. One commenter suggested that the Department determine the lowest-achieving five percent of schools in the Nation rather than have each State determine its own lowest-achieving five percent. Other commenters recommended changes that include taking into account the length of time a school has been designated for restructuring, measuring gains related to English language proficiency, and including newly designated Title I schools (especially secondary schools) that do not yet have an improvement status.

Several commenters also suggested changing the method for determining ''lack of progress,'' including using subgroups rather than the ''all students'' group, measuring progress in meeting adequate yearly progress targets, and narrowing achievement gaps. Another commenter recommended clarifying that, even if a school shows gains greater than the State average, it should not be considered to be making progress if those gains are not greater than zero.

Finally, several commenters suggested that graduation rates be taken into account in determining the lowest-achieving Title I high schools. One of these commenters suggested including in Tier I all Title I high schools in improvement, corrective action, or restructuring with a graduation rate below 60 percent as well as their feeder middle and junior high schools.

Discussion: In developing our proposed definition of the lowest-achieving five percent of schools for each State as defined in the SIG NPR, we considered several alternatives, including the use of the existing ESEA improvement categories and the possibility of using a measure that would identify the lowest-achieving five percent of schools in the Nation rather than on a State-by-State basis. The goal was to identify a uniform measure that could be applied easily by all States using existing assessment data. We started with Title I schools in improvement, corrective action, or restructuring as the initial universe from which to select the lowest-achieving schools because those are the schools eligible to receive SIG funds. ESEA improvement categories were deemed too dependent on variations in individual subgroup performance, rather than the overall performance of an entire school, to reliably identify our worst schools. A nationwide measure, although appealing from the perspective of national education policy, would likely have identified many schools in a handful of States and few or none in the majority of States, making it an inappropriate guide for the most effective use of State formula grant funds.

In general, we believe that the changes and alternatives suggested by commenters would add complexity to the method for determining the lowest-achieving five percent of schools without meaningfully improving the outcome. With the changes noted subsequently, we believe the definition proposed in the SIG NPR is straightforward, can be easily applied using data available in all States, and can produce easily understood results in the form of a list of State's lowest-achieving schools that have not improved in a number of years.

Regarding the determination of whether a school is making progress in improving its scores on State assessments, the commenters highlighted the complexity and potential unreliability of measuring year-to-year gains on such assessments. In response, we are simplifying this aspect of the definition to give SEAs greater flexibility in determining a school's lack of progress on State assessments over a number of years.

We also agree that it is important to include Title I high schools in improvement, corrective action, or restructuring that have low graduation rates in the definition. The Secretary has made addressing our Nation's unacceptably high drop-out rates—an estimated 1 million students leave school annually, many never to return—a national priority. In recognition of this priority, and in response to recommendations from commenters, we are including in the definition any Title I high school in improvement, corrective action, or restructuring that has had a graduation rate that is less than 60 percent over a number of years.

Accordingly, we have made these changes and incorporated the process for determining the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring—also known as Tier I schools for purposes of SIG funds—into a new definition of *persistently lowest-achieving schools* in this notice.

Changes: The Department has added a definition of *persistently lowest-achieving schools* to this notice that incorporates the process described in the SIG NPR for determining the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring (or the lowest-achieving five such schools, whichever number of schools is greater) (''Tier I'' schools for purposes of SIG). This new definition also includes any Title I high school in improvement, corrective action, or restructuring that has had a graduation rate of less than 60 percent over a number of years (as will the ''Tier I'' definition for SIG purposes). We have removed language in proposed section I.A.1.a(ii) of the SIG NPR defining ''a school that has not made progress.''

Comment: Numerous commenters expressed support for including chronically low-achieving secondary schools that are eligible for, but not receiving Title I funds as Tier II schools, as proposed in section I.A.1.b in the SIG

NPR, including one commenter who suggested that LEAs be required to fund Tier II schools. Other commenters, however, opposed the use of Title I funds in non-Title I schools and recommended that other funding be identified to serve those schools or stated that the inclusion of those schools is more appropriately addressed in the Title I reauthorization. One commenter suggested that it would not be appropriate to provide Title I funds to such schools when the SIG NPR would restrict the number of Title I schools that can be served in Tier I.

Discussion: We believe that low-achieving secondary schools often present unique resource, logistical, and pedagogical challenges that require rigorous interventions to address. Yet, many such schools that are eligible to receive Title I funds are not served because of competing needs for Title I funds within an LEA. The large amounts of ARRA funds—available through Stabilization, Race to the Top, and SIG—present an opportunity to address the needs of these low-achieving secondary schools. Accordingly, we have continued in this notice to include secondary schools that are eligible for, but do not receive, Title I funds in the definition of the persistently lowest-achieving schools in a State.

As proposed in the SIG NPR, such secondary schools would have been eligible if they were equally as low-achieving as a Tier I school. We realized that this standard was too vague, particularly in light of the rigorous interventions that would be required if an SEA identified, and an LEA decided to serve, such a school. As a result, we have changed the definition to include secondary schools that are eligible for, but do not receive, Title I funds and that are among the lowest-achieving five percent of such schools in a State (or the lowest five such schools, whichever number of schools is greater). An SEA must identify these schools using the same criteria as it uses to identify the lowest-achieving Title I schools in improvement, corrective action, and restructuring.

For the reasons noted earlier in this notice, we have also included in the definition any high school that is eligible for, but does not receive, Title I funds and that has had a graduation rate that is less than 60 percent over a number of years.

Changes: The Department has added a definition of *persistently lowest-achieving schools* to this notice that incorporates the lowest-achieving five percent of secondary schools in a State that are eligible for, but do not receive, Title I funds (or the lowest-achieving five such schools, whichever number of schools is greater) (''Tier II'' schools for purposes of SIG). This new definition also includes any high school that is eligible for, but does not receive, Title I funds that has had a graduation rate of less than 60 percent over a number of years (as will the ''Tier II'' definition for SIG purposes). We have removed language in proposed section I.A.1.b of the SIG NPR that required a comparison of the achievement of secondary schools to Tier I schools.

General Comments on the Four Intervention Models

Comment: One commenter supported the Secretary's intent in proposing the four interventions in the SIG NPR. The commenter noted that the majority of SIG funds are intended to target the very lowest-achieving schools in the Nation—schools that have not just missed their accountability targets by narrow margins or in a single subgroup. Rather, they are schools that have ''profoundly fail[ed]'' their students ''for some time.'' Accordingly, the commenter acknowledged that the four interventions are appropriately designed to engage these schools in bold, dramatic changes or else to close their doors.

Conversely, several commenters suggested that the four interventions are too prescriptive and do not leave room for State innovation and discretion to fashion similarly rigorous interventions that may be more workable in a particular State. The commenters noted that for some school districts, particularly the most rural districts, none of the interventions may be feasible solutions. In addition, several commenters rejected the idea that there should be any Federal requirements governing struggling schools. The commenters suggested that schools in need of improvement be permitted to engage in self-improvement strategies tailored to each individual school's needs as determined at the local level based on local data, rather than being mandated to adopt specific models by the Federal Government.

Discussion: We disagree that the four models limit State innovation. Each model provides flexibility and permits LEAs to develop approaches that are tailored to the needs of their schools within the broad context created by each model's requirements. We do not believe that any one model is appropriate for all schools; rather, it is the Department's intention that LEAs select the model that is appropriate for each particular school.

Changes: None.

Comment: Several commenters suggested adding a fifth intervention option. One commenter, for example, suggested permitting States to propose an alternative, but rigorous, intervention model for approval through a peer review process. The commenter noted that whatever accountability measure is adopted in the SIG notice of final requirements should serve to ensure that the model is held accountable for results. Another commenter suggested a ''scale up'' model, in which an LEA could use SIG funds to expand interventions with documented success in producing rapid improvement in student achievement within that LEA or in another LEA with similar demographics and challenges. Yet another commenter suggested adding a ''supported transformation'' model to accommodate, in particular, the needs of children in low-achieving schools in small, rural communities that lack the capacity to transform their schools. The commenter identified the need for an SEA to build the capacity of struggling LEAs by working to develop models for intervention, to identify specific evidence-based intervention strategies, and to provide ongoing, intensive technical, pedagogical, and practical assistance so as to increase LEAs' capacity to assist their low-achieving schools.

Discussion: We included the four school intervention models in the SIG NPR after an extensive examination of available research and literature on school turnaround strategies and after outreach to practitioners. Our goal, which we believe was achieved, was to identify fundamental, disruptive changes that LEAs could make in order to finally break the long cycle of educational failure—including the failure of previous reforms—in the Nation's persistently lowest-achieving schools. We also believe that these models, despite their limited number, potentially encompass a wide range of specific reform approaches, thus negating the need for a ''fifth model.'' We understand, for example, that school closure may not work in some LEAs, but that leaves the turnaround, restart, or transformation models as possible options for them. We also know that not all States have a charter school law, limiting the restart options available to LEAs in such States. However, even where charter schools are not an option, an LEA could work with an Education Management Organization (EMO) to restart a failed school or could pursue one of the other three intervention models. And we understand that some rural areas may face unique challenges

in turning around low-achieving schools, but note that the significant amount of funding available to implement the four models will help to overcome the many resource limitations that previously have hindered successful rural school reform in many areas.

The four school intervention models described in the SIG NPR also are internally flexible, permitting LEAs to develop their own approaches in the broad context created by the models' requirements. For example, the turnaround and restart models focus on governance and leadership changes, leaving substantial flexibility and autonomy for new leadership teams to develop and implement their own comprehensive improvement plans. Even the transformation model includes a wide variety of permissible activities from which LEAs may choose to supplement required elements, which are primarily focused on creating the conditions to support effective school turnarounds rather than the specific methods and activities targeting the academic needs of the students in the school.

We also note that over the course of the past eight years, States and LEAs have had considerable time, and have been able to tap new resources, to identify and implement effective school turnaround strategies. Yet they have demonstrated little success in doing so, particularly in the Nation's persistently lowest-achieving schools, including an estimated 2,000 ''dropout factories.'' Under the ESEA, States have been required to set up statewide systems of support for LEA and school improvement; to identify low-achieving schools for a range of improvement, corrective action, and restructuring activities; and to use the school improvement reservation under section 1003(a) of the ESEA to fund such improvement activities. However, the overall number of schools identified for improvement, corrective action, and restructuring continues to grow; in particular, the number of chronically low-achieving Title I schools identified for restructuring has roughly tripled over the past three years to more than 5,000 schools. SEAs have thus far helped no more than a handful of these schools to successfully restructure and exit improvement status, in large part, we believe, because of an unwillingness to undertake the kind of radical, fundamental reforms necessary to improve the persistently lowest-achieving schools.

Finally, although we believe this recent history of failed school improvement efforts justifies using ARRA SIG funds to leverage the adoption of the more far-reaching reforms required by the four school intervention models, we note that Part A of Title I of the ESEA continues to make available nearly $15 billion annually, as well as an additional $10 billion in fiscal year 2009 through the ARRA, that SEAs and LEAs may use to develop and implement virtually any reform strategy that they believe will significantly improve student achievement and other important educational outcomes in Title I schools. In particular, we would applaud State and local efforts to use existing Title I funds to scale up successful interventions or to build State and local capacity to develop and implement other promising school intervention models. For all of these reasons, we decline to add a fifth school intervention model to this notice.

Changes: None.

Turnaround Model

Principal and Staff Replacement

Comment: Many commenters opposed replacing principals and staff as part of the turnaround model. Although several commenters acknowledged that poor leadership and ineffective staff contribute to a school's low performance, a majority claimed that staff replacement has not been established as an effective reform strategy, others stated that such a strategy is not a realistic option in many communities that already face teacher and principal shortages, and one commenter suggested that replacement requirements associated with turnaround plans would discourage teachers and principals from working in struggling schools.

In addition, many commenters opposed sanctioning principals and staff, partly because, as one commenter claimed, the turnaround model assumes that most problems in a school are attributable to these individuals. One stated that principals face ''trying'' circumstances and another stated that the proposed requirements ignore the ''vital role'' that principals play in high-need schools. These commenters stated that other factors—such as poverty, lack of proper support, and tenure and collective bargaining laws—should be addressed before decisions are made to replace principals and staff. One commenter claimed that principals and teachers in low-achieving schools could perform their jobs if they are given adequate training and support and working conditions are improved. Another opposed the replacement requirement because the commenter believed a stable and consistent staff is a key factor in school improvement.

Discussion: We understand that replacing leadership and staff is one of the most difficult aspects of the four models; however, we also know that many of our lowest-achieving schools have failed to improve despite the repeated use of many of the strategies suggested by the commenters. The emphasis of the ARRA on turning around struggling schools also reflects, in part, an acknowledgement by the Congress that past efforts have had limited or no success in breaking the cycle of chronic educational failure in the Nation's persistently lowest-achieving schools.

Accordingly, the Department believes that dramatic and wholesale changes in leadership, staffing, and governance—such as those required by the turnaround model—are an appropriate intervention option for creating an entirely new school culture that breaks a system of institutionalized failure. Although we acknowledge the possibility that the turnaround model could discourage some principals and teachers from working in the lowest-achieving schools, others will likely be attracted by the opportunity to participate in a school turnaround with other committed staff. In addition, other Federal programs, such as the Teacher Incentive Fund and Race to the Top programs, are helping to create incentives and provide resources that can be used to attract and reward effective teachers and principals and improve strategies for recruitment, retention, and professional development.

Changes: None.

Comment: A number of commenters recommended changes to the principal and staff replacement requirements. One commenter proposed a detailed ''fifth model'' that focused upon providing additional support to teachers by improving working conditions, such as reducing class size and providing professional development opportunities. Others recommended (1) providing a principal with the autonomy to make his or her own firing and hiring decisions instead of requiring the replacement of 50 percent of the staff; (2) allowing staff to reapply for their positions; (3) retaining principals who were recently hired; (4) providing principals with a ''window'' of opportunity to improve their schools before being replaced; (5) suggesting that the replacement requirement extend to superintendents and boards of education; (6) retaining at least 50 percent of current staff who reapply and meet all of the requirements of the

redesigned school; and (7) focusing on staff qualifications and putting in place effective staff rather than on a particular target level of replacements.

Discussion: We agree with some of the changes to the turnaround model suggested by commenters. For example, new language in paragraph (a)(1)(i) of the turnaround model recognizes the vital role played by the principal and acknowledges that new principals need authority to make key changes required to turn around a failing school. Under this new language, the new principal of a turnaround school would have ''sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates.''

We also recognize that the staff selected for a turnaround school must have the skill and expertise to be effective in this context. We are adding language clarifying that all personnel must be screened and selected based on locally adopted competencies to measure their effectiveness in a turnaround environment.

In addition, while the SIG NPR would have required an LEA to replace at least 50 percent of the staff of a turnaround school, new paragraph (a)(1)(ii)(A) of the turnaround model requires an LEA, after screening all staff using locally adopted competencies, to rehire no more than 50 percent of the school's staff. Further, some commenters appear to have overlooked proposed section I.B.1 in the SIG NPR, which would give LEAs flexibility to continue implementing interventions begun within the last two years that meet, in whole or in part, the requirements of the turnaround, restart, or transformation models and, thus, would in many cases allow an LEA to retain a recently hired principal in a turnaround school. We are retaining this flexibility provision in this notice.

Finally, the turnaround model includes significant provisions aimed at supporting teachers. For example, the SIG NPR called for ''ongoing, high-quality, job-embedded professional development to staff,'' as well as increased time for collaboration and professional development for staff. These supports for teachers and other staff are retained in this final notice.

Changes: We have modified the provisions in the turnaround model in paragraph (a)(1)(i) to give the new principal of a turnaround school ''sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates.'' As described earlier, we have also revised paragraph (a)(1)(ii) to require that an LEA use locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students. In addition, instead of the requirement that an LEA replace ''at least 50 percent of the staff'' in a turnaround school, paragraph (a)(1)(ii)(A) of the definition requires an LEA to screen and rehire ''no more than 50 percent'' of the existing staff.

Comment: Numerous commenters expressed concerns that a national shortage of principals and teachers would prevent successful implementation of the turnaround model. Two commenters stated that, in order to replace half of the staff as required by the turnaround model, an LEA would likely be forced to hire less experienced teachers and rely on emergency credentials or licensure to fully staff a turnaround school. One commenter claimed that research shows that large pools of available applicants are essential for successful replacement of principals and teachers. Another commenter stated that there is a ''national shortage of transformational leaders'' who can lead turnaround schools. Further, many commenters claimed that replacing half of a school's staff would be difficult or even impossible in rural schools and small communities. One commenter asserted that the shortage of teachers in rural areas would disqualify these LEAs from applying for school improvement funds. Another stated that even with recruitment incentives it would be difficult to fill staff vacancies. One commenter urged the Secretary to take such shortages into account before requiring ''blanket firings'' of teachers. In addition, several commenters observed that chronically low-performing schools already suffer from a number of vacancies due to high staff turnover rates. In fact, one commenter believed replacing 50 percent of the staff was not a ''tough'' consequence because these schools already experience high turnover.

These concerns led several commenters to recommend flexibility regarding the staff replacement requirement of the turnaround model, including the opportunity to request a waiver if an LEA could demonstrate an inability to fill vacancies, and a required evaluation before principals and staff can be replaced. Other commenters opposed the replacement of principals without consideration of such factors as years of experience and district-level support, recommended a three-year window in which to make replacement decisions based upon multiple measures, and suggested the provision of high-quality professional development before replacing any staff.

Discussion: We recognize that the replacement requirement will present challenges for LEAs, particularly in rural areas, where highly effective principals and teachers capable of leading educational transformation may be in short supply; however, the difficulty of identifying new qualified teachers and school leaders for a turnaround school must be measured against the enormous human and economic cost of accepting the status quo for the Nation's persistently lowest-achieving schools. We simply cannot afford to continue graduating hundreds of thousands of students annually who are unprepared for either further education or the workforce, or to permit roughly one million students to drop out of high school each year, many of them never to return to school. Instead, States and LEAs must work together to recruit, place, and retain the effective principals and staff needed to implement the turnaround model. The Department is supporting these efforts through Federal grant programs that can provide resources for improving strategies used to recruit effective principals and teachers, such as the Teacher Incentive Fund program, which helps increase the number of effective teachers teaching poor, minority, and disadvantaged students in hard-to-staff subjects and schools.

Finally, we wish to clarify that the requirements for the turnaround model do not require ''blanket firings'' of staff. The Department agrees that staff should be carefully evaluated before any replacement decisions are made and has added new language requiring LEAs to use ''locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students.'' If required by State laws or union contracts, principals and staff may have to be reassigned to other schools as necessary.

Changes: As described earlier, we have revised paragraph (a)(1)(ii) to require that an LEA use locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students. The LEA must then screen all existing staff before rehiring no more than 50 percent of them.

Comment: Numerous commenters claimed that there is little research supporting the replacement of leadership and staff in school turnaround efforts. One commenter cited a 2008 Institute of Education Sciences (IES) report, ''Turning Around Chronically Low-Performing Schools,'' that, according to the commenter, recommends that decisions to remove staff should be made on an individual basis. Several others also asserted that the proposed requirement to replace at least 50 percent of staff was arbitrary, with two commenters recommending instead that the Department ''empower the turnaround principal with the autonomy to hire, based on merit, for every position in the school.''

Discussion: We are not claiming that merely replacing a principal and 50 percent of a school's staff is sufficient to turn around a low-achieving school. Although principal and staff replacement are key features of the turnaround model proposed in the SIG NPR, they are not the only features. The strength of the turnaround model lies in its comprehensive combination of significant staffing and governance changes, an improved instructional program, ongoing high-quality professional development, the use of data to drive continuous improvement, increased time for learning and for staff collaboration, and appropriate supports for students. The staffing and governance changes are intended primarily to create the conditions within a school, including school climate and culture, that will permit effective implementation of the other elements of the turnaround model. Dramatic changes in leadership, staff, and governance structure help lay the groundwork to create the conditions for autonomy and flexibility that are associated with successful turnaround efforts. Accordingly, we decline to remove the requirement for replacing staff in a turnaround model.

Changes: None.

Comment: Many commenters claimed that teacher tenure, State collective bargaining laws, and union contracts prevent school administrators from replacing staff as required by the turnaround model. Several commenters stated that union contracts would force school administrators to reassign dismissed teaching staff to other schools, and the turnaround model would not solve the problem of removing ineffective teachers from the classroom. One commenter asked if an LEA would have to negotiate staff replacement with the union or if the Federal grant requirements supersede State due process laws. One commenter noted that the Department would have to provide ''involuntary transfer authority'' to LEAs in order for them to implement the turnaround model in collective bargaining States.

Several commenters called for the Department to foster collaboration with teacher unions as well as the larger community. One of these commenters claimed that collaboration ''increases leadership and builds professionalism'' and recommended that evidence of collaboration be documented. Another asserted the involvement of school-based personnel in decision-making is key to the successful implementation of school interventions. Another recommended that an LEA seek ''feedback'' from all stakeholders, including students, parents, and unions, as to whether an intervention is ''feasible or warranted.''

Discussion: We recognize that collective bargaining agreements and union contracts may present barriers to implementation of the turnaround model; however, we do not believe these barriers are insurmountable. In particular, drawing upon pockets of success in cities and States across the country, the Secretary believes LEAs and unions can work together to bring about dramatic, positive changes in our persistently lowest-achieving schools. Accordingly, the Department encourages collaborations and partnerships between LEAs and teacher unions and teacher membership associations to resolve issues created by school intervention models in the context of existing collective bargaining agreements. We also encourage LEAs to collaborate with stakeholders in schools and in the larger community as they implement school interventions.

Changes: None.

Comment: Many commenters stated that the term ''staff'' was not clearly defined. One commenter presumed it excluded maintenance, food services, and other support staff. Another stated that the Department should allow LEAs to develop their own definition of ''staff,'' and permit LEAs to determine whether non-instructional staff should be included in the replacement calculus. Two commenters also requested greater clarity regarding the meaning of ''new governance.''

Discussion: We believe that, in high-achieving schools facing the most challenging of circumstances, every adult in the school contributes to the school's success, including the principal, teachers, non-certificated staff, custodians, security guards, food service staff, and others working in the school. Conversely, in a persistently lowest-achieving school, we believe that no single group of adults in the school is responsible for a culture of persistent failure. For this reason, our general guidance is that an LEA should define ''staff'' broadly in developing and implementing a turnaround model. The Department declines to define the term ''staff'' in this notice, but plans to issue guidance that will clarify this and other issues related to the turnaround model. As for the term ''governance,'' the language in paragraph (a)(1)(v) suggests a number of possible governance alternatives that may be adopted in the context of a turnaround model. The Department declines to provide a more specific definition in order to permit LEAs the flexibility needed to adopt a turnaround governance structure that meets their local needs and circumstances.

Changes: None.

Comment: Several commenters asked that the Department consider the possible negative consequences of replacing staff on a school and community, with one commenter suggesting that replacing half of the staff could result in more damage ''to a fragile school than no change at all.'' Another commenter stated that maintaining a consistent staff is a key to school success.

Discussion: The Secretary disagrees that implementing a turnaround model would be worse than ''no change at all.'' The schools that would implement a turnaround model have, by definition, persistently failed our children for years, and dramatic and fundamental change is warranted. In addition, as stated elsewhere in this notice, the commenters overlook the fact that the other options—the transformation, school closure, and restart models—do not require replacement of 50 percent of a school's staff. If an LEA believes that it cannot successfully meet the requirements of the turnaround model, we recommend that it consider one of the other three options.

Changes: None.

Comment: Numerous commenters stated that decisions regarding school restructuring are best decided on the local, rather than the Federal, level. One commenter opposed the requirements for the turnaround model as being too prescriptive, and another recommended that the local school board be provided with the discretion to determine how best to implement the turnaround model. One commenter agreed that ''ineffective staff and leadership should be replaced in order for school improvement to work,'' but stated that the turnaround model's ''one-size-fits-all formula may not be the best approach for all schools.'' Two

commenters specifically stated that the decision to remove a principal and staff should be determined by a local school board. Similarly, another commenter noted that decisions to replace a principal and staff should be based upon ''local data'' rather than Federal requirements that are not tailored to an individual school's needs. One of these commenters stated that local decision-making is particularly important if a school has been underperforming for a period longer than the ''principal's tenure or if the principal has begun a transformative process that could be harmed by a leadership change.''

Discussion: An LEA is free to exercise local control and use local data and leadership to determine which of the four school intervention models to follow in turning around a persistently lowest-achieving school. However, after nearly a decade of broad State and local discretion in implementing, with little success, the school improvement provisions of the ESEA, the Department believes, for the purpose of this program, it is appropriate and necessary to limit that discretion and require the use of a carefully developed set of school intervention models in the Nation's lowest-achieving schools. In particular, the turnaround and transformation models include a combination of staffing, governance, and structural changes with specific comprehensive instructional reforms that the Department believes hold great promise for effective investment of the $3 billion provided for the SIG program by the ARRA.

Changes: None.

Relationship Between Turnaround and Transformation Models

Comment: Several commenters believed the turnaround model lacked sufficient detail and did not provide adequate direction to LEAs attempting to implement the model. In contrast, several commenters appreciated the level of detail contained in the transformation model and suggested that the turnaround model provide a similar level of detail. Some of these commenters recommended that the turnaround model incorporate some of the specific provisions contained in the transformation model. For example, one commenter suggested that the turnaround model include the transformation model's provisions regarding implementation of instructional changes. Another commenter specifically recommended that the turnaround model incorporate the transformation model's criteria for teacher effectiveness.

Discussion: We agree that the turnaround model in the SIG NPR lacked clarity and potentially created confusion about whether applicants could draw upon permissible activities described in the transformation model. The Department did not intend to limit LEA discretion in adapting elements of the transformation model to the turnaround model. Accordingly, we are adding new language in paragraph (a)(2)(i) to clarify that an LEA implementing the turnaround model may implement any of the required and permissible activities under the transformation model.

Changes: We have clarified in paragraph (a)(2)(i) that an LEA implementing a turnaround model may also implement other strategies such as ''[a]ny of the required and permissible activities under the transformation model.'' In addition, we have made changes in the turnaround model that correspond to changes we made in response to comments on the transformation model. The specific changes are noted subsequently in this notice in our discussion of comments on the transformation model.

Restart Model

Comment: Many commenters opposed the restart model described in the SIG NPR because, they claimed, charter schools generally do not perform better than regular public schools. In particular, these commenters cited recent research from the Center for Research on Education Outcomes (CREDO) at Stanford University showing that fewer than one-fifth of charter schools demonstrated gains in student achievement that exceeded those of traditional public schools. One commenter also mentioned a RAND study highlighting the low performance of charter schools in Texas and a study by researchers at Johns Hopkins University showing that most EMO-operated schools were outperformed by traditional public schools. Most of these commenters proposed broadening or strengthening the restart option, but one commenter recommended removing it from the list of permitted school intervention models. One commenter claimed that, where charter schools had raised student achievement, in most cases it was attributable to high student attrition rates brought about by demanding school schedules and behavioral rules that did not work for all students. A few commenters noted either that some States do not allow charter schools or that the restart model would be unlikely to work in rural areas. Several commenters also opposed the restart model because it might displace students and disrupt existing efforts to build community schools; another commenter recommended that any planning and reorganization for a restart model take place during the school year, while students remain in the school, so that there would be no disruption in services if the school were closed and then reopened as a restart school.

Discussion: We acknowledge that the available research on the effectiveness of charter schools in raising student achievement is mixed, that some State laws significantly limit the creation or expansion of charter schools, and that smaller communities, particularly in rural areas, may not have sufficient access to providers or teachers to support the creation of charter schools. However, there are many examples of high-quality charter schools, and the Secretary believes very strongly that high-achieving charter schools can be a significant educational resource in communities with chronically low-achieving regular public schools that have failed to improve after years of conventional turnaround efforts. Although they are not a ''silver bullet'' for failing schools or communities, a more balanced view of the results produced by charter schools suggests that they offer promising and proven options for breaking the cycle of educational failure and fully merit inclusion in the restart model.

The Department also recognizes the concerns expressed by commenters about the potential disruption to students, parents, and communities that may be connected with a restart plan that involves closing and then reopening a school. To help address this concern, we are adding language to this notice allowing a school conversion—and not just closing and reopening a school—to qualify as an acceptable restart model.

At the same time, the Department emphasizes that just as the restart model is one of four school intervention models supported by this notice, charter schools are just one option under the restart model. Contracting with an EMO is another restart option that may provide sufficient flexibility in States without charter school laws or in rural areas where few charter schools operate. An EMO also may be able to develop and implement a plan that permits students to stay in their school while undergoing a restart. For example, some EMOs hired to turn around a low-achieving school may begin planning for the turnaround in late winter or early spring, hire and train staff in late spring and early summer, reconfigure and re-equip the school—including the

acquisition of curricular materials and technology—during the summer, and then reopen promptly in the fall, resulting in minimal, if any, disruption to students and parents.

Changes: We have changed the language in paragraph (b) to define a restart model as one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an EMO that has been selected through a rigorous review process.

Defining Rigorous Review

Comment: Several commenters supported the requirement in the SIG NPR that LEAs select a charter school operator, a CMO, or an EMO through a ''rigorous review process.'' In general, these commenters viewed this requirement as essential to ensuring the quality of a restart model. Commenters also asked for clarification of how such a review would be conducted, including guidance for SEAs and LEAs and opportunities for parent and community involvement in reviewing and selecting a restart school operator. One commenter raised a concern about how it would be possible to review rigorously a new charter school operator, CMO, or EMO.

Discussion: We believe that SEAs and LEAs should have flexibility to develop their own review processes for charter school operators, CMOs, and EMOs, based both on local circumstances and on their experiences in authorizing charter schools. We will provide guidance and technical assistance in this area, but will leave final decisions on review requirements to SEAs and LEAs. We believe flexibility in defining ''rigorous review'' is warranted because of the wide variation in local need and community context as well as in the size, structure, and experience of charter school operators, CMOs, and EMOs.

Changes: None.

Clarifying Restart Operator Definitions

Comment: One commenter recommended that the Department provide a definition of CMO and EMO, while other commenters suggested changes or requested clarification of the definitions of CMO and EMO provided in the SIG NPR. One commenter recommended defining a CMO as an organization that ''operates or manages a school or schools'' rather than, as in the SIG NPR, ''operates charter schools.'' This commenter also urged the Department to define ''whole school operations'' as applied to the definition of EMO. Another commenter recommended that the Department include charter schools operated or managed by an LEA in the definition of CMO. One commenter also urged the Department to establish reporting requirements for CMOs and EMOs, including data on student achievement, the impact of reforms on student achievement, information on how CMOs and EMOs serve students with disabilities, and other accountability data. Finally, two commenters also suggested that the Department award funding directly to CMOs and EMOs to pay for planning, outreach, and training staff for a restart effort.

Discussion: We included definitions of CMO and EMO in the preamble of the SIG NPR and are adding these definitions in the definition of *restart model* for clarification purposes. We agree that the definition of CMO should include organizations that operate or manage charter schools and have made this change to the CMO definition in this notice accordingly. Although a charter school may exist as part of an LEA, it is unlikely that the LEA would be responsible for operating or managing the charter school. Therefore, we have not expressly included LEAs in the definition of CMO. We are retaining the EMO definition from the SIG NPR, and believe the emphasis on ''whole-school operation'' is sufficient to distinguish EMOs from other providers that may help with certain specific aspects of school operation and management, but that do not assume full responsibility for the entire school, as is required by the restart model.

The Department does not believe it is necessary to add new or additional reporting requirements for EMOs and CMOs, as their performance will be captured by the reporting metrics established in the final SIG notice. More specifically, SEAs and LEAs already must report on the intervention model used for each persistently lowest-achieving school, as well as outcome data for those schools, including outcome data disaggregated by student subgroups. As for providing SIG funding directly to CMOs and EMOs, the SIG program is a State formula grant program, and the Department must allocate funds to States in accordance with the requirements of section 1003(g) of the ESEA. Moreover, the only eligible SIG subgrantees are LEAs.

Changes: We have included the definitions of CMO and EMO in the definition of *restart model.* We have also modified the definition of CMO slightly to reflect the fact that a CMO may either operate or manage charter schools.

Flexibility Under the Restart Model

Comment: Several commenters recommended greater flexibility for LEAs implementing the restart model, including options to create magnet schools or ''themed'' schools. Another commenter, claiming that few charter school operators, CMOs, or EMOs have experience in ''whole school takeover,'' recommended permitting a phase-in approach to charter schools that would allow a charter school operator to start with two or three early grades and gradually ''take over'' an entire school.

Discussion: We believe that considerable flexibility regarding the type of school program offered is inherent in the restart model, which focuses on management and not on academic or curricular requirements. For example, restart operators would be free to create ''themed'' schools, so long as those schools permit enrollment, within the grades they serve, of any former student who wishes to attend. Additionally, LEAs have the flexibility to work with providers to develop the appropriate sequence and timetable for a restart partnership. Whether through ''phase-in'' models or complete conversions, the Department encourages SEAs and LEAs to take into account local context and need in making these decisions.

Changes: None.

Comment: Many commenters asked for clarification regarding various aspects of the restart model, including whether it includes conversion of existing schools, who would have authority over the operator of restart schools (*e.g.,* LEA, SEA, independent governing board, or a State or local authorizer), and whether a group of individuals (*e.g.,* teachers) could manage a restart school.

Discussion: We have changed the definition of restart model to clarify that it includes conversion of an existing school and not just strategies involving closing and reopening a school. In particular, we believe that conversion approaches may permit implementation of a restart model with minimal disruption for students, parents, and communities. In general, an LEA would be responsible for authorizing or contracting with charter school operators, CMOs, or EMOs for implementation of a restart model. The precise form of this contract or agreement would be up to State or local authorities and could include each of the alternatives mentioned by the commenters. However, regardless of the lines of authority, autonomy and freedom to operate independently from the State or LEA are essential elements

of the restart model. A group of individuals, including teachers, would be eligible to manage a restart school so long as they met the local requirements of the rigorous review process included in the restart model.

Changes: We have revised the first sentence of the definition of restart model to read as follows: ''A restart model is one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process.''

Comment: Several commenters recommended that the Department include specific elements of the turnaround and transformation models in the restart model, including improved curricula and instruction, student supports, extended learning time, community involvement, and partnering with community-based organizations. Similarly, one commenter noted that a restart model might permit a school to reopen as a charter school while changing little inside the school and urged the Department to require restart schools to use a model of reform that has been proven effective or that includes evidence-based strategies. Another commenter urged the Department to encourage use of the restart model to better serve high-risk students and help dropouts reconnect to school.

Discussion: We note that restart models could include nearly all of the specific reform elements identified under the turnaround and transformation models, but decline to require the use of any particular element or strategy. The restart model is specifically intended to give operators flexibility and freedom to implement their own reform plans and strategies. The required rigorous review process permits an LEA to examine those plans and strategies—and helps prevent an operator from assuming control of a school without a meaningful plan for turning it around—but should not involve mandating or otherwise requiring specific reform activities. However, the review process may require operators to demonstrate that their strategies are informed by research and other evidence of past success.

Changes: None.

Comment: One commenter recommended requiring the review process for CMOs and EMOs to include curriculum and staffing plans for meeting the needs of subgroups of students, including students with disabilities and limited English proficient students. Another commenter suggested that the review process include examining the extent to which a restart operator sought to ensure that restart schools would serve all former students by requiring States to collect data on the number of students from low-income families, students with disabilities, and limited English proficient students served by a restart school compared with the number of those students served by the school it replaced.

Discussion: Restart operators, by definition, have almost complete freedom to develop and implement their own curricula and staffing plans, and the Department declines to place limits in this area in recognition of the core emphasis of the restart model on outcomes rather than inputs. The requirement to enroll any former student who wishes to attend the school will help to ensure that charter school operators, CMOs, and EMOs include serving all existing groups of students in their restart plans. Moreover, the effectiveness of these curricula and staff changes in meeting the needs of subgroups of students, including students with disabilities and limited English proficient students, will be measured by the metrics in the final SIG notice, which will include disaggregated achievement data by student subgroup. We encourage SEAs and LEAs to analyze these data to ensure that subgroups of students are properly included in restart schools and that their needs are addressed.

Changes: None.

Comment: A few commenters expressed concern that charter schools are not subject to the same oversight, regulation, or accountability as are regular public schools. Other commenters emphasized the importance, particularly in the case of charter school conversions, of ensuring autonomy, flexibility, and freedom from district rules and collective bargaining agreements, so that charter schools can implement their own cultures and practices.

Discussion: The restart model is specifically intended to give providers freedom from the rules and regulations governing regular public schools, in recognition of the fact that, while such rules and regulations may be effective in requiring certain kinds of inputs, such as teacher qualification requirements or a uniform length of the school day or year, they have not been demonstrated to have a significant impact on educational outcomes. Moreover, many successful charter schools have achieved outstanding results by changing these inputs, such as by hiring non-traditional but skilled teachers and by extending the length of the school day. The Department believes that the outcome metrics established in the final SIG notice will ensure accountability for the performance of restart schools.

Changes: None.

Comment: One commenter expressed concern that LEAs could use the restart model to close an existing charter school that, while successful in raising student achievement, remained in school improvement status under section 1116 of the ESEA.

Discussion: An existing charter school that is raising student achievement would be unlikely, under the requirements for identifying a State's persistently lowest-achieving schools, to be identified for school intervention, because those requirements include not only low levels of achievement, but also making little or no progress on improving those low levels of achievement in recent years. Moreover, this notice, as did the SIG NPR, provides flexibility for a school, such as a recently converted charter school that meets the requirements of the restart model, to use SIG funds to continue or complete reforms it began within the prior two years. On the other hand, it is possible, and in some cases appropriate, for an LEA to close a charter school that is not serving its students well and implement a new intervention model in the school.

Changes: None.

School Closure

Comment: A number of commenters expressed their general views regarding whether closing schools is an appropriate intervention for raising student achievement. Although no commenter advocated extensive use of this intervention, several acknowledged that school closure is sometimes necessary, particularly for schools with a long history of very low achievement, and noted that some States and LEAs have used this strategy successfully. Other commenters, however, expressed a number of logistical concerns with this intervention. Some noted that closing schools is often not feasible in rural areas in which the distance between schools is too great to make practical enrolling students from a closed school in higher-achieving schools. Others noted that many LEAs do not have multiple schools at the same grade level in which to enroll students from a closed school. Still others noted capacity issues that would prevent schools from accommodating additional students or the lack of high-achieving schools in which to enroll students from a closed school. One

commenter noted that this intervention would not be feasible on a large scale in large, urban LEAs with limited resources and substantial numbers of low-achieving students. Another commenter recommended that this intervention be limited to those LEAs with the capacity to enroll affected students in other, higher-achieving schools.

Discussion: School closure is just one of four school intervention models from which an LEA may choose to turn around or close its persistently lowest-achieving schools, and the Department recognizes that it may not be appropriate or workable in all circumstances. To clarify this, we have revised the definition of *school closure* in this notice to clarify that this option is viable when there are re-enrollment options in higher-achieving schools in the LEA that are within reasonable proximity to the closed school that can accommodate the students from the closed school. To make this option more viable, we have changed ''high-achieving schools'' to ''higher-achieving schools.''

Changes: We have included the following clarifying language in the definition of *school closure:* ''School closure occurs when an LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.''

Comment: A number of commenters expressed the opinion that a school should never be closed if that option displaces students and disrupts communities. The commenters noted the importance of having a neighborhood school that serves as the cornerstone of a community. One commenter noted that, when students are moved to a school in a new neighborhood, parents often find it more difficult to feel a sense of belonging at the school or ownership of their child's education. Another commenter noted that school closings often anger parents, exacerbate overcrowding, increase safety and security concerns in neighboring schools, and place students who need specific supports in schools that may not be able to provide those supports. One commenter expressed concern that closing a school may not address the educational needs of specific students, which may be masked within a higher-achieving school. Another commenter suggested the need for an ''educational impact statement'' before a school is closed, and one suggested that an LEA have a detailed plan demonstrating how support would be provided to students and their families transitioning to different schools. Several commenters suggested that the final requirements provide for parent and community input before a school is closed.

Discussion: The Department recognizes and understands that school closures, by definition, displace students and disrupt communities and are among the most difficult decisions faced by local authorities. However, each of the four school intervention models is predicated on the potentially positive impact of ''disruptive change'' on student educational opportunities, achievement, and other related outcomes. Schools targeted for closure under this notice will likely have served their communities poorly for many years, if not decades, as measured by such factors as student achievement, graduation rates, and college enrollment rates. Moreover, such schools also will likely have proven impervious to positive change despite years of identification for improvement, corrective action, or restructuring under the ESEA as well as other previous reform efforts. The Department believes that, when such schools prove unwilling or unable to change, closure must be considered. Many communities have experience in closing, consolidating, or otherwise changing the structure of their existing schools and have their own processes and procedures for obtaining public input and approval for such changes, including assessment of the impact on students, families, neighborhoods, other schools, and transportation requirements, as well as for developing plans to facilitate smooth transitions for everyone involved. Although the Department encourages LEAs and SEAs to involve students, parents, educators, the community, and other stakeholders in the process, we decline to add any additional requirements in this area of appropriate local discretion.

To address the disruptiveness school closure may cause to a community, we have modified the definition of *school closure*, as noted in response to the prior comment, to clarify that closure should entail re-enrolling students from the closed school in other schools in the LEA that are within reasonable proximity to the closed school. Finally, we note that school closure is just one of the four school intervention models available under the terms of this notice. LEAs and communities that wish to preserve a neighborhood school may do so by implementing a turnaround, restart, or transformation model.

Changes: None.

Comment: Several commenters recommended that a school not be closed unless an LEA opens a new school in its place. One commenter specifically suggested closing a school in phases and reopening it as a new school. Under this concept, an LEA would permit both students and staff who choose to do so to remain in the school but the school would enroll no new students. At the same time, according to the commenter, other schools would be better prepared to absorb students who wish to transfer, logistical and facility issues would be minimized, and the new school would have adequate time to recruit and train high-quality staff and develop its instructional program.

Discussion: The Department has revised the language in the definition of *school closure* to recognize the need to have available options for accommodating the educational needs of the students in a closed school, but does not believe it is necessary to require an LEA to open a new school in place of the closed school. Many LEAs participating in the SIG program have under-utilized or under-enrolled schools that may readily accommodate students from a closed school; requiring such LEAs to open new schools simply does not make sense. However, an LEA that chooses to reopen a new school would be free to do so, either on its own or as part of a turnaround or restart model.

Changes: None.

Comment: One commenter suggested that the Department provide incentives for the development of successful charter schools in the areas in which schools are closed. Specifically, the commenter recommended that the Department require that an LEA that partners with a CMO in order to serve the area in which the LEA is closing schools receive a priority for SIG funds.

Discussion: SIG funds are intended to provide support to LEAs for school improvement efforts targeted primarily at the persistently lowest-achieving schools in a State, and not at providing incentives for the creation of new schools, charter or otherwise, that serve the same general attendance area. However, the restart model (as defined in this notice) may be used by LEAs in situations where the goal is to replace a persistently lowest-achieving school with a charter school.

Changes: None.

Comment: One commenter suggested that, in highlighting which schools may be available to enroll students from a

closed school, the Department specifically mention magnet schools along with charter schools.

Discussion: Decisions about the schools to which students from closed schools may transfer are best left to the LEAs selecting the school closure option. The language in the definition of *school closure,* as in the SIG NPR, specifically mentions charter schools only because not all available charter schools might be operated by the LEA that is closing a neighborhood public school and, thus, might not be initially included in an LEA's plan for transferring students from the closed school. This is not a concern for magnet schools and, thus, the Department declines to make the requested change.

Changes: None.

Comment: One commenter recommended that the Department require that, before an LEA may enroll students from a closed school in another school, the LEA require a prospective receiving school, including a charter school, to demonstrate a record of effectiveness in educating its existing students and the capacity to integrate and educate new students from closed schools. The commenter emphasized the importance of this latter point, noting that merely because a school is high-achieving does not mean that it is equipped to help additional students from the lowest-achieving schools succeed while maintaining the quality of its current educational program.

Discussion: The Department believes that the requirement to enroll students from a closed school in a higher-achieving school responds to the concerns of this commenter. The Department believes that such higher-achieving schools are likely in nearly all circumstances, to provide a better education for any new students than was available in the closed school.

Changes: We have added language to the definition of *school closure* clarifying that school closure entails re-enrolling students from the closed school in other schools in the LEA that are higher achieving. We have also added clarifying language that such schools may be new schools for which achievement data are not available.

Comment: Several commenters questioned how SIG funds may be used in closing a school. One commenter noted the importance of gaining community input and that the costs for closing a school may include costs associated with conducting parent and community meetings. Another commenter recommended that allowable costs include academic supports for struggling students who are enrolled in new schools.

Discussion: LEAs may use SIG funds to pay reasonable and necessary costs related to closing a persistently lowest-achieving school, including the costs associated with parent and community outreach. However, SIG funds may not be used to serve students, struggling or otherwise, in the schools to which they transfer, unless those schools are Title I schools. The Department will include additional examples of permissible uses of SIG funds in closing a school in guidance accompanying the application package for SIG funds.

Changes: None.

Transformation Model

General Comments

Comment: Many commenters expressed strong support for the transformation model. One commenter, for example, described it as ''a balanced, comprehensive approach,'' and another described it as ''a supportive and constructive approach.'' Still another commenter stated that it ''provides the greatest hope for promoting genuine school improvement.'' Several commenters noted that the transformation model would be, in reality, the only choice among the four proposed interventions, especially for many rural school districts.

A few commenters responded that the transformation model would still not enable some communities, particularly those with difficult demographics, to make adequate yearly progress. Other commenters worried that, if not monitored carefully, the transformation model would become like the ''other'' restructuring option under section 1116(b)(8)(B)(v) of the ESEA, perceived as the easiest (but least meaningful) way to intervene in a struggling school. One of these commenters recommended adding strong language to make clear that the transformation model is not an incremental approach and that, except in the area of changing staff, the model is as rigorous as the turnaround model.

Discussion: We appreciate the commenters' support. We believe the transformation model holds tremendous promise for reforming persistently lowest-achieving schools by developing and increasing teacher and school leader effectiveness, implementing comprehensive instructional reform strategies, increasing learning time and creating community-oriented schools, and providing operating flexibility and sustained support. Assuming the activities that support these components are implemented with fidelity, the transformation model represents a rigorous and wholesale approach to reforming a struggling school, unlike the manner in which the ''other'' restructuring option in section 1116 of the ESEA has often been implemented.

Changes: To strengthen the transformation model, we have made a number of changes that we discuss in the following paragraphs in our responses to specific comments.

Comment: One commenter recommended affording greater flexibility to LEAs in implementing the transformation model by allowing them to choose which activities are ''required'' and which are ''permissible'' within the four components. The commenter noted that LEAs with persistently lowest-achieving schools may not have the teacher or leader capacity or system to support, monitor, and sustain reforms across all of their schools. The commenter advocated for creating systems at the district level that enable LEAs to provide support at each school.

Discussion: We decline to make the requested changes. We have carefully reviewed the required activities within the four components of the transformation model and have concluded that each is necessary to ensure the rigor and effectiveness of the model; therefore, we continue to require each one. An LEA, of course, may implement any or all of the permissible activities as well as other activities not described in this notice.

In anticipation of receiving unprecedented amounts of SIG funds, SEAs and LEAs should begin now to plan for how they can use those funds most effectively by putting in place the systems and conditions necessary to support reform in their persistently lowest-achieving schools. Despite the best preparation, however, we know that not every LEA with persistently lowest-achieving schools has the capacity to implement one of the four interventions in this notice in each such school. As indicated in the SIG NPR, therefore, an LEA that lacks the capacity to implement an intervention in each persistently lowest-achieving school may apply to the SEA to implement an intervention in just some of those schools.

Changes: None.

Comment: One commenter recommended adding ''graduation rates,'' rated equally with test scores, to assess student achievement in evaluating staff, ensuring that a school's curriculum is implemented with fidelity, and providing operating flexibility. The commenter also recommended making increasing graduation rates a required activity.

Discussion: We agree with the commenter that increasing high-school

graduation rates is vital to improving student achievement, particularly in our Nation's ''dropout factories.'' We are, accordingly, adding increasing high school graduation rates in three provisions of the transformation model to make clear that it is also a goal of the interventions in this notice. We are also making a corresponding change in the turnaround model. In addition, we are defining ''persistently lowest-achieving schools'' to include high schools that have had a graduation rate below 60 percent over a number of years. Through these changes, we hope to identify high schools with low graduation rates that would implement one of the interventions in this notice.

Changes: We have added increasing high school graduation rates in three provisions of the transformation model: paragraphs (d)(1)(i)(B)(*1*); (d)(1)(i)(C); and (d)(4)(i)(A). We also made a corresponding change to the turnaround model in paragraph (a)(1)(i). In addition, we have included high schools that have had a graduation rate below 60 percent over a number of years in the definition of *persistently lowest-achieving schools*.

Comment: One commenter recommended that the Department require an LEA to set up an organizational entity within the LEA to be responsible and held accountable for rapid improvement in student achievement in schools implementing the transformation model in order to ''expedite the clearing of bureaucratic underbrush'' that can impede the model's effectiveness.

Discussion: Although nothing in this notice would preclude an LEA from establishing an organizational entity responsible for ensuring rapid improvement in student achievement in schools implementing the transformation model, we decline to require the establishment of such an entity. Evidence of an LEA's commitment to support its schools in carrying out the required elements of the transformation model is a factor that an SEA must consider in evaluating the LEA's application for SIG funds.

Changes: None.

Developing and Increasing Teacher and School Leader Effectiveness

Comment: A number of commenters supported the emphasis in the transformation model on strong principals and teachers, noting that they are critical to transforming a low-achieving school. Commenters cited specific provisions that they supported, such as ongoing, high-quality job-embedded professional development; strategies to recruit, place, and retain effective staff; increasing rigor through, for example, early-college high schools; extending learning time; emphasizing community-oriented schools; increased operating flexibility; and sustained support from the LEA and SEA.

Discussion: The Secretary appreciates the commenters' support.

Changes: None.

Comment: One commenter suggested adding the word ''ensuring'' in the heading of the component of the transformation model that requires developing teacher and school leader effectiveness. Another suggested changing the heading to ''providing teachers and school leaders with the resources and tools needed to be effective.''

Discussion: We decline to make these changes. First, we do not believe that a school can *ensure* teacher and school leader effectiveness. We do believe, however, that a school can take steps to *improve* teacher and leader effectiveness. Second, we note that eligible schools in LEAs that receive SIG funds—all of which are among the lowest-achieving schools in a State—will have very large amounts of resources to implement the transformation model or one of the other school intervention models. Accordingly, we do not believe lack of resources will be a barrier for reforming the persistently lowest-achieving schools in a State. Moreover, there is a significant requirement that an LEA provide ongoing, high-quality, job-embedded professional development for all staff in a school implementing the transformation model. Principals, teachers, and school leaders, therefore, should have sufficient support to do their jobs.

Changes: We have revised the heading in paragraph (d)(1) to read: ''Developing and improving teacher and school leader effectiveness.''

Comment: Many commenters, many of whom were principals or represented principals, opposed the requirement to replace the principal. A number of commenters commented that such a decision should be made locally, based on local data and circumstances in individual schools, rather than being mandated by the Federal Government. One commenter, although acknowledging the importance of effective school leadership, asserted that a school's underperformance should not necessarily be blamed on the principal. The commenter cited other salient factors, such as whether the principal has the authority needed to turn a school around or whether the principal is laying a foundation for improvements not yet reflected in test scores. One commenter suggested that a principal not be removed until the principal's performance has been reviewed. Others suggested that, rather than replacing the principal immediately, the requirements permit an LEA to offer comprehensive support and leadership training for school leaders and other staff to assist them in making the significant changes needed to transform a school. Several commenters suggested removing the principal unless the person commits to and is held accountable for a turnaround plan that requires, for example, working with a partner management organization or other entity skilled in turning around struggling schools. Another commenter suggested permitting flexibility with respect to removing the principal in cases warranted by, for example, the size and geography of a school or LEA, the cause of the academic failure, the specific solutions being sought, or other barriers to removal.

Discussion: We refer readers to the earlier section of these comments and responses titled ''Principal and Staff Replacement'' in which we respond to similar public comments about the principal replacement requirement under the turnaround model.

Changes: None.

Comment: One commenter recommended a three-pronged approach to defining principal effectiveness: evidence of improved student achievement; changes in the number and percentage of teachers rated as effective and highly effective; and assessment of a principal's highest priority actions and practices.

Discussion: Generally, the Department agrees that multiple measures, including the use of student achievement data, should be used to evaluate principal effectiveness. Accordingly, we have revised proposed section I.A.2.d.i.A.*1* in the SIG NPR (new paragraph (d)(1)(i)(B)(*1*) to allow an LEA to use, in additional to data on student growth, observation-based assessments and ongoing collections of professional practice that reflect student achievement and increased high-school graduation rates to evaluate principal effectiveness.

Changes: We have modified paragraph (d)(1)(i)(B)(*1*) regarding evaluation systems for teachers and principals to require that those systems take into account student growth data as a significant factor as well as other factors ''such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduation rates.''

Comment: Several commenters cited the shortage of principals, particularly in rural areas, as a reason to eliminate the requirement to remove the principal in a school using the transformation model. One commenter suggested hiring a ''turnaround leader'' or contracting with an external lead partner instead of replacing the principal.

Discussion: We refer readers to the earlier section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to public comments about the principal replacement requirement under the turnaround model.

Changes: None.

Comment: A number of commenters suggested that a principal who has been recently hired to turn around a school should not be removed.

Discussion: The commenters might have overlooked the fact that proposed section I.B.1 in the SIG NPR allowed schools that have ''implemented, in whole or in part within the last two years, an intervention that meets the requirements of the turnaround, restart, or transformation models'' to ''continue or complete the intervention being implemented.'' Thus, a recently hired principal who was hired to implement a school intervention model that meets some or all of the elements of one of the interventions in this notice would not have to be replaced for purposes of a transformation model. We have retained this flexibility in this notice.

Changes: None.

Comment: Many commenters reacted to the requirement in the SIG NPR to use evaluations that are based in significant measure on student growth to improve teachers' and school leaders' performance. A few commenters supported the requirement; most opposed it for a number of reasons. Many commenters objected specifically to assessing teacher effectiveness using testing instruments not designed for that purpose. One commenter noted that standardized assessments are designed to measure students' ready retrieval of knowledge and do not accurately attribute student learning to particular lessons, pedagogical strategies, or individual teachers. In addition, the commenter noted that such assessments do not measure qualities like student motivation, intellectual readiness, persistence, creativity, or the ability to apply knowledge and work productively with others. One commenter asserted that State assessments are generally of low quality and measure a narrow range of student learning. The commenter also noted that assessments do not acknowledge the contributions (or lack thereof) of others, such as prior teachers, towards student achievement. Two commenters argued that State assessments do not provide information about the conditions in which learning occurs and over which a teacher has no control, such as class size, student demographics, or instructional resources. One commenter asserted that State assessments fail to capture academic growth with respect to students with disabilities. A number of commenters proposed other academic and nonacademic measures for evaluating teachers and school leaders, such as standards-based evaluations of practice that include such criteria as observations of lesson preparation, content, and delivery; innovation in teaching practices; analyses of student work and other measures of student learning, such as writing samples, grades, goals in individualized education programs for students with disabilities, and ''capstone'' projects such as end-of-course research papers; assessment of commitment and ability to use feedback and data to learn and improve practices; one-on-one teaching; staff leadership and mentoring skills; conflict resolution skills; crisis management experience; extra-curricular roles and contributions to a school; and relationships with parents and the community.

Discussion: We respect and agree with the commenters' concerns that student achievement data alone should not be used as the sole means to evaluate teachers and principals. We must develop and support better measures that take into account student achievement and more accurately measure teacher and principal performance. Accordingly, we have revised the transformation model's evaluation systems provision to require that these systems take into account student growth data as a significant factor, but also include other factors ''such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduation rates.'' We have also clarified that those systems must be rigorous, transparent, and equitable and that they must be designed and developed with teacher and principal involvement.

Nonetheless, it is important to note that the Secretary believes that student achievement data must be included as a significant factor in evaluations of teacher and principal effectiveness. We are confident that the legitimate concerns of the commenters regarding use of student data can be addressed.

Changes: We have modified paragraph (d)(1)(i)(B) regarding evaluation systems for teachers and principals in several respects. First, we modified paragraph (d)(1)(i)(B) to require that evaluation systems be rigorous, transparent, and equitable. Second, we modified paragraph (d)(1)(i)(B)(*1*) to require that those systems take into account student growth data as a significant factor but also include other factors ''such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduation rates.'' Third, we added paragraph (d)(1)(i)(B)(*2*) to require that evaluation systems be designed and developed with teacher and principal involvement.

Comment: A number of commenters raised issues related to collective bargaining and the transformation model. Several commenters objected to the perceived requirement to establish a performance pay plan based on student outcomes, noting that collective bargaining agreements and, in some cases, State laws often prohibit such a plan. Two others noted that, because union contracts limit a principal's control over staffing, principals should not be held accountable for school performance results. At least one commenter expressed concern that these collective bargaining barriers could preclude implementation of the transformation model.

Discussion: In general, we refer readers to the earlier section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to similar public comments regarding collective bargaining as it relates to the turnaround model. In addition, we note that the transformation model does not require that an LEA establish a performance pay plan for teachers or principals. Rather, an LEA must identify and reward school leaders, teachers, and other staff who, in implementing the transformation model, have increased student achievement and graduation rates. One way of meeting this requirement would be through performance pay. An LEA has the flexibility to devise other means that meet this requirement.

Changes: None.

Comment: One commenter, responding to the proposed requirement to remove staff who fail to contribute to raising student achievement, recommended that this provision be deleted. The commenter noted that this provision would make it very difficult to attract the most highly qualified teachers and principals to the persistently lowest-achieving schools. The commenter suggested that extensive

professional development, rather than removal, be required for staff in schools in which achievement does not improve.

Discussion: In general, we refer readers to the section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to similar comments regarding removal of the staff replacement requirement under the turnaround model.

Changes: We have modified paragraph (d)(1)(i)(C) regarding removing staff who, in implementing a transformation model, have not contributed to increased student achievement and high school graduation rates to make clear that removal should only occur after an individual has had multiple opportunities to improve his or her professional practice and has still not contributed to increased student achievement and increased high school graduation rates.

Comment: Several commenters objected to the Secretary's proposal to require an LEA to make ''high-stakes'' tenure and compensation decisions through which the LEA would ''identify and reward school leaders, teachers, and other staff who improve student achievement outcomes and identify and remove those who do not.'' The commenters thought this standard was too imprecise. They noted that teacher compensation, tenure, and dismissal are, for the most part, governed by State laws and/or collective bargaining agreements that cannot be simply overturned by a Federal grant program. One of the commenters suggested that this provision be modified by adding, at the end, the phrase ''in full accordance with local and State laws, including collective bargaining agreements.''

Discussion: In general, we refer readers to the section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to similar comments regarding collective bargaining issues as they relate to the turnaround model. In addition, we note that no LEA is required to apply for a School Improvement Grant. Those that do will receive significant resources to support their efforts to reform their most struggling schools, but they also must have the ability to implement the required components of whichever intervention they choose. Accordingly, we decline to make the recommended changes.

Changes: None.

Comment: A number of commenters provided additional examples of what professional development of staff under the transformation model should entail, such as: addressing the needs of students with disabilities and limited English proficient students; creating professional learning communities within a school; providing mentoring; involving parents in their child's education, especially parents of limited English proficient students and immigrant children; understanding and using data and assessments to improve and personalize classroom practice; and implementing adolescent literacy and mathematics initiatives.

Discussion: We appreciate the many excellent suggestions for additional areas on which professional development should focus. With one exception, we decline to add examples. We could never list all relevant topics for strong professional development, which must be tailored to the needs of staff in particular schools, and we would not want to suggest that topics not listed were, thus, less worthy of addressing.

Changes: We have added a permissible activity in paragraph (d)(2)(ii)(C) under ''comprehensive instructional reform strategies'' to highlight the need for additional supports and professional development for teachers and principals in implementing effective strategies to educate students with disabilities in the least restrictive environment and to ensure that limited English proficient students acquire language skills necessary to master academic content.

Comment: One commenter noted that the requirement to provide staff with ongoing, high-quality, job-embedded professional development was silent with respect to the impact of professional development on instruction. The commenter pointed to an apparent inconsistency with the emphasis in the permissible activity that suggested that LEAs be required to institute a system for measuring changes in instructional practices resulting from professional development. Because the commenter values professional development designed to improve instruction, the commenter recommended that the Secretary require a school to have a system for measuring changes in instructional practices resulting from professional development in order to evaluate its efficacy.

Discussion: We believe that the requirement to provide ongoing, high-quality, job-embedded professional development to staff in a school is clearly tied to improving instruction in multiple ways. First, the requirement that professional development be ''job-embedded'' connotes a direct connection between a teacher's work in the classroom and the professional development the teacher receives. Second, the examples of topics for professional development, such as subject-specific pedagogy and differentiated instruction, are directly related to improving the instruction a teacher provides. Third, professional development must be aligned with the school's comprehensive instructional program. Finally, the articulated purpose of professional development in paragraph (d)(1)(i)(D) of the transformation model is to ensure that a teacher is ''equipped to facilitate effective teaching and learning'' and has the ''capacity to successfully implement school reform strategies.'' Although we believe that instituting a system for measuring changes in instructional practices resulting from professional development can be valuable, we decline to require it as part of this program. We believe that the specificity in the nature of the professional development required for a transformation model is sufficient to ensure that it, in fact, results in improved instruction.

Changes: None.

Comment: One commenter recommended that the Department add a requirement that professional development be designed to ensure that staff of a school using the transformation model can work effectively with families and community partners. The commenter reasoned that, given the emphasis on working with families and community partners to improve the academic achievement of students in a school, staff must know how to work with them.

Discussion: We decline to make the suggested change. We agree with the commenter that family and community involvement in a school is critical to the school's ultimate success and have included, as both required and permissible activities, a variety of provisions to address this important need. We would expect professional development to include appropriate training to ensure, as the commenter suggests, that staff are well equipped to facilitate family and community involvement. We do not believe, however, that we should try to expressly highlight each and every appropriate topic of high-quality professional development in this notice.

Changes: None.

Comment: One commenter suggested that financial incentives are not necessarily the most motivating factor in retaining high-quality staff. Rather, the commenter stated that the culture of a school—*i.e.*, quality relationships with other teachers, the school climate, the leadership of the principal, and the potential for professional growth—is often a greater motivator.

Discussion: We agree that financial incentives are not the only motivating factor in attracting staff to a school or retaining them in the school. We hope that changes in the culture of a school that result from implementing the interventions established in this notice play a large role in attracting, placing, and retaining high-quality staff. As a result, in both the transformation and turnaround models, we have provided examples of several strategies to recruit, place, and retain high-quality staff.

Changes: We have added examples of strategies designed to recruit, place, and retain staff, including ''financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions'' in paragraphs (d)(1)(i)(E), with respect to the transformation model, and (a)(1)(iii), with respect to the turnaround model. We have also made clear that those strategies must be designed to recruit, place, and retain staff who have the skills necessary to meet the needs of the students in the schools implementing a transformation or turnaround model, respectively.

Comment: Several commenters supported the concept of ''mutual consent''—that is, ensuring that a school is not required to accept a teacher without the mutual consent of the teacher and the principal, regardless of the teacher's seniority. One commenter recommended making ''mutual consent'' a required component of both the turnaround model and the transformation model. Other commenters, however, opposed any mention of ''mutual consent,'' even as a permissible activity. One asserted that the concept conflicts with the provision in section 1116(d) of the ESEA that precludes interventions in Title I schools from affecting the rights, remedies, and procedures afforded school employees under Federal, State, or local laws or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between employees and their employers.

Discussion: Like several commenters, the Secretary supports and encourages the use of mutual consent. The Secretary considers mutual consent to be a positive example of LEAs' partnering with unions to bring change to the Nation's persistently lowest-achieving schools. That said, we decline to require mutual consent as a part of the transformation model because mutual consent policies and other similar agreements are best resolved at the State and local levels in the context of existing collective bargaining agreements.

Changes: None.

Comment: One commenter recommended that the Secretary add a requirement that, in the event budget cuts occur, a principal be allowed to lay off teachers on the basis of performance rather than seniority. The commenter noted that this provision could be an important lever for obtaining positive changes to collective bargaining agreements that would help low-achieving schools attract and retain effective staff.

Discussion: We decline to make the suggested change. Although we support the need to modify collective bargaining agreements if they impede efforts to attract and retain qualified staff in the persistently lowest-achieving schools, we do not believe we can or should prescribe the specific terms of those agreements.

Changes: None.

Comprehensive Instructional Reform Strategies

Comment: Several commenters suggested that the Department revise the comprehensive instructional reform component of the transformation model by modifying or expanding the provision requiring the use of individualized student data to inform and differentiate instruction. One commenter suggested clarifying that individualized student data are to be used to meet students' academic needs while another commenter suggested clarifying that the data should be used to address the needs of ''individual'' students. Other commenters suggested expanding this provision to include non-academic data such as chronic absenteeism, truancy, health (vision, hearing, dental, and access to primary care), safety, family engagement and well-being, and housing. The commenter suggested that these data be used, in partnership with parents and other community partners, to address other student needs.

Discussion: The purpose of this section of the transformation model is to improve instruction, and we agree that adding the word ''academic'' is a helpful clarification. Although we also agree that non-academic data can play an important role in identifying other student needs that can affect learning, local school administrators, working with parents and community partners, are in the best position to determine how to address those needs. Therefore, we decline to add a requirement that a school examine non-academic data.

Changes: We have added the word ''academic'' in paragraph (d)(2)(i)(B) to clarify that the continuous use of student data to inform and differentiate instruction must be promoted to meet the academic needs of individual students. We made a corresponding change in paragraph (a)(1)(vii) regarding the turnaround model.

Comment: One commenter noted that requiring instructional programs to be ''evidence-based'' instead of ''research-based'' would enable the use of programs for which there is accumulated evidence that does not meet the current ESEA definition of ''scientifically based research.''

Discussion: We agree with the commenter that an LEA should only implement instructional programs for which there is a sufficient body of evidence supporting improved student achievement. We do not believe a change is necessary, however, because we do not use the term ''scientifically based research'' and, therefore, do not invoke the stringent requirements in section 9101(37) of the ESEA.

Changes: None.

Comment: One commenter recommended that the Department add a provision that would require a school to identify ''off-track and out-of-school youth, through analysis and segmentation of student data,'' and develop and implement education options to put them back on track to graduate. The commenter stated that, once students are off track to graduating on time, their likelihood of graduating is often as low as 20 percent. Moreover, in the 2,000 high schools in the Nation with four-year graduation rates of 60 percent or less, up to 80 percent of ninth graders are significantly behind in skills or credits. Several other commenters suggested including stronger support for re-enrolling youth who have left high school as a critical part of increasing graduation rates.

Discussion: We agree that programs and strategies designed to re-engage youth who have dropped out of high school without receiving a diploma are necessary in increasing graduation rates. Accordingly, we are modifying the notice to address this need. We also hope that an LEA's extension or restructuring of the school day to add time for strategies such as advisory periods to build relationships between students, faculty, and other staff will help to identify students who are struggling and to secure for them the necessary supports sufficiently early to prevent their dropping out of school. Finally, as noted earlier, we have added references to increased high school graduation rates in four provisions to make clear that implementation of the models in high schools must focus on increasing graduation rates as well as improved student achievement.

Changes: We have modified paragraph (d)(2)(ii)(E)(*3*) to add re-engagement strategies as an example of a way to increase high school graduation rates. We have also added paragraph (d)(2)(ii)(E)(*4*) suggesting that permissible comprehensive instructional reform strategies may include establishing early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.

Comment: A number of commenters suggested that the Department include additional required or permissible activities for carrying out comprehensive instructional reform strategies. Specifically, two commenters recommended that the Department require schools to conduct periodic reviews so as to ensure that the curriculum is being implemented with fidelity (rather than merely permitting this activity) and improve school library programs. Other commenters suggested expanding the permissible activities in secondary schools to include learning opportunities that reflect the context of the community in which the school is located, such as service learning, place-based education, and civic and environmental education. The commenters also recommended clarifying that improving students' transition from middle to high schools should include family outreach and parent education. Another commenter suggested that the Department expand the list of permissible activities in elementary schools to include providing opportunities for students to attend foreign language immersion programs.

Discussion: The Secretary agrees that there are any number of important activities that would be appropriate to address in a transformation model. As described in this notice, the transformation model, by necessity, focuses on several broad strategies. However, nothing precludes local school leaders from expanding the model as necessary to address other factors needed to respond to the specific needs of students in the school.

Changes: We have included in this notice a definition of *increased learning time* that would permit many, if not all, of the commenters' suggestions. For example, that definition makes clear that a school may increase time to teach core academic subjects, including, for example, civics and foreign languages, and to provide enrichment activities such as service learning and experiential and work-based learning opportunities.

Comment: One commenter recommended that the Department add the implementation of technology-based solutions to the list of permissible activities, while another commenter recommended that the Department add online instructional services offered by a for-profit or non-profit entity as an example of a comprehensive, research-based instructional program.

Discussion: The Secretary agrees that technology can be an important tool for supporting instruction, and we are adding as a permissible activity the suggestion to use and integrate technology-based supports and interventions as part of a school's instructional program. Although online instructional programs might be part of a school's system of technology-based supports, we decline to mention it specifically. Online instructional programs, if research-based, are one of many ways to meet the needs of students in struggling schools, particularly to provide courses or programs that schools in rural or remote areas cannot otherwise provide. We cannot mention in this notice, however, each and every type of instructional program.

Changes: We have added as a permissible activity in paragraph (d)(2)(ii)(D) using and integrating technology-based supports and interventions as part of a school's instructional program.

Comment: One commenter recommended that the Department add to the transformation model the strategy to reorganize the school with a new purpose and structure it as a magnet school, a thematic school, or a school-community partnership.

Discussion: We decline to include this change in the transformation model, a model that uses the existing staff in a school and who would likely not have the expertise to implement an instructional program with a whole new purpose.

Changes: None. However, we have clarified in paragraph (a)(2)(ii) that a turnaround model may include a new school model (*e.g.*, themed, dual language academy).

Increasing Learning Time and Creating Community-Oriented Schools

Comment: Several commenters expressed support overall and for various activities of the ''Increasing learning time and creating community-oriented schools'' component of the transformation model, including the references to school climate, internships, and community service.

Discussion: We appreciate the commenters' support. We are including some of these activities in the definition of *increased learning time* that also applies to the Stabilization Phase II and Race to the Top programs, rather than listing them as specific elements of the ''increasing learning time and creating community-oriented schools'' component. They have no less importance, however.

Changes: We have included in the notice a definition of *increased learning time* that includes opportunities for enrichment activities for students, such as service learning and community service.

Comment: Several commenters suggested that the Department highlight the importance of certain activities by revising the heading of this component. For example, one commenter suggested revising the heading to emphasize family involvement while another commenter suggested revising it to specifically reference students' social and emotional needs. A third commenter suggested expanding the title to include ''using research-based methods to deliver comprehensive services to students.''

Discussion: We decline to make these changes. Although we embrace the need to address not just the academic needs of students but also how their social and emotional needs affect their learning and to emphasize the importance of family involvement, we believe it is preferable to keep the heading for this component more general. The headings for each of the components in the transformation model are deliberately broad so as to cover a number of important activities, and the fact that a specific activity is not in a heading is not a reflection of that activity's importance. We believe the list of permissible activities illustrates various ways in which a school can address students' social and emotional needs and involve families in their child's education.

Changes: None.

Comment: Several commenters suggested that the Department highlight the importance of certain activities by making them required. For example, some commenters recommended expanding the required activities to include a comprehensive guidance curriculum delivered by a school counselor who is certified by the State department of education; partnering with parents, faith-based and community-based organizations, and others to provide comprehensive student services; more time for social and emotional learning; and improving school climate. Another commenter recommended requiring that the transformation model include the components of the Comprehensive School Reform Demonstration program.

Other commenters suggested adding references to high school study-abroad programs as an example of a student enrichment activity and activities designed to reduce out-of-school suspensions and expulsions as a strategy for addressing school climate.

Discussion: As we noted earlier, we agree that there are any number of important activities that would be appropriate to address in a transformation model. As described in this notice, the transformation model, by necessity, focuses on several broad strategies. However, there is nothing to prevent local school leaders from expanding the model as necessary to address other factors needed to respond to the specific needs of students in the school.

Changes: None.

Comment: One commenter suggested that the Department define ''community-oriented schools'' as schools that partner with community-based organizations to provide necessary services to students and families using research-based methods, which might include: a school-based, on-site coordinator; comprehensive school- and student-level needs assessments; community-assets assessments and identification of potential partners; annual plans for school-level prevention and individual intervention strategies; delivery of an appropriate mix of prevention and intervention services; data collection and evaluation over time, with on-going modifications of services; and/or other research-based components. Another commenter suggested removing the word ''oriented'' and using the term ''community-schools,'' which the commenter indicated is more commonly known.

Discussion: Although we appreciate the commenters' interest in ensuring greater clarity on the concept of ''community-oriented schools,'' we decline to make the suggested changes. The components of ''community-oriented schools'' will vary school by school depending on student and community needs and resources. There is nothing in the notice that would prevent local school leaders from undertaking any of the strategies in the definition the commenters proposed if necessary to respond to the specific needs of students in the school.

Changes: None.

Comment: Some commenters suggested that the Department add ''community-based organization'' and ''workforce systems, specifically nonprofit and community-based organizations providing employment, training, and education services to youth'' to the list of entities with which an LEA or school may choose to partner in providing enrichment activities during extended learning time.

Discussion: In the SIG NPR, we listed universities, businesses, and museums as examples of entities with which a school could partner in providing enrichment activities during extended learning time. In this final notice, we are instead including a definition of *increased learning time* that applies to the Stabilization Phase II, Race to the Top, and SIG programs. That definition no longer includes examples of appropriate partnership entities, because there may be any number of organizations or entities in a particular community that might be appropriate partners.

Changes: In the definition of *increased learning time,* we have included the following: ''(b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations;''.

Comment: One commenter suggested that the reference to ''parents,'' in the list of entities with which schools might partner to create safe school environments that meet students' social, emotional, and health needs, should include ''parent organizations.''

Discussion: We agree with this suggestion and are adding a reference to parent organizations.

Changes: We have revised the permissible activity in paragraph (d)(3)(ii)(A) regarding creating safe school environments to include a reference to partnering with parents and ''parent organizations,'' along with faith- and community-based organizations, health clinics, other State and local agencies, and others.

Comment: One commenter recommended that the Department define ''family engagement'' and requiring the use of certain family-engagement mechanisms, including family-engagement coordinators at school sites, home visitation programs, family literacy programs, and parent leadership programs. Another commenter recommended defining ''community engagement'' as systemic efforts to involve parents, community residents, members of school communities, community partners, and other stakeholders in exploring student and school needs and, working together, developing a plan to address those needs.

Discussion: We agree that there are any number of important activities that could support increased family and community engagement. The reference to family and community engagement in this notice is deliberately broad so as to provide maximum flexibility in determining how best to address local needs. However, there is nothing to prevent local school leaders from incorporating any of the strategies mentioned or other strategies that will lead to effective family and community engagement.

Changes: None.

Comment: One commenter recommended that the Department include language to make clear that extending learning time can be accomplished by adding a preschool program prior to school entry.

Discussion: The Secretary agrees that preschool education is very important in ensuring that children enter kindergarten with the skills necessary to succeed in school. He also agrees that preschool education is an effective way to increase learning time.

Changes: We have added, as a permissible activity in paragraph (d)(3)(ii)(D), expanding the school program to offer full-day kindergarten or pre-kindergarten.

Comment: Several commenters suggested that the Department clarify that increased learning time includes summer school, after-school programs, and other instruction during non-school hours. Several other commenters suggested increasing instructional time during the school day and the need to make existing time more effective, including through the use of technology. Another commenter suggested clarifying that extended learning time should be beyond the current State-mandated instructional time.

Discussion: We have added in this notice a definition of *increased learning time* that applies to the Stabilization Phase II, Race to the Top, and SIG programs. Under that definition, *increased learning time* means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for instruction in core academic subjects; time for instruction in other subjects and enrichment activities that contribute to a well-rounded education; and time for teachers to collaborate, plan, and engage in professional development within and across grades and subjects.

Changes: We have revised the notice to define *increased learning time.* The full definition is as follows:

Increased learning time means using a longer school day, week, or year

schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects including English; reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects.[9]

Providing Operating Flexibility and Sustained Support

Comment: One commenter suggested that the Department add a requirement that a school implementing the transformation model be required to present a plan for how the various elements of the model are aligned and coordinated to improve student achievement and other indicators of student growth (such as health and civic competencies).

Discussion: We decline to make the suggested change. We are confident that a school implementing the transformation model would have a plan without the need for the Department to require it.

Changes: None.

Comment: One commenter recommended that the list of potential technical assistance providers in proposed section I.A.d.iv.A.2 of the SIG NPR be expanded to include ''professional organizations that have a track record of turning around low-performing schools.''

Discussion: This provision is intended to ensure that schools implementing the transformation model receive coordinated ongoing technical assistance and reflects the belief that an SEA, LEA, or external lead partner organization would be in the best position to integrate services at the school level. This notice does not preclude the involvement of entities other than those mentioned so long as they fulfill the role of a lead partner in integrating services and supports for the school.

Changes: None.

Comment: One commenter cautioned about the use of ''weighted per-pupil school-based budgeting,'' noting that early research indicates this practice undermines cross-school cooperation by promoting competition among schools for students and the resources or liabilities they may represent.

Discussion: We note that implementing a per-pupil school-based budget formula that is weighted based on student needs is listed as a permissible, not required, activity to give schools operational flexibility. We believe allocating funds based on student characteristics and then giving schools broad flexibility to use those funds to meet their respective needs is one way to provide incentives for schools to use their cumulative resources in innovative ways to meet the needs of their student population. If an LEA determines such budgeting is not appropriate in the context of its schools, it need not implement this activity.

Changes: None.

Final Requirements

The Secretary establishes the following requirements for the Stabilization program. We may apply these requirements in any year in which this program is in effect.

I. *Assurance Indicators and Descriptors:* In general, a State must collect and publicly report (as defined in this notice) data and other information for the following indicators and descriptors regarding the assurances that the State has provided in order to receive funds under the Stabilization program.

(a) *Achieving equity in teacher distribution.* A State must collect and publicly report data and other information on the extent to which students in high- and low-poverty schools in the State have access to highly qualified teachers; steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers; on how teacher and principal performance is evaluated; and the distribution of performance evaluation ratings or levels among teachers and principals. Specifically, a State must—

Indicator (a)(1). Confirm, for the State, the number and percentage (including numerator and denominator) of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified consistent with section 9101(23) of the Elementary and Secondary Education Act of 1965, as amended (ESEA);

Indicator (a)(2). Confirm whether the State's Teacher Equity Plan (as part of the State's Highly Qualified Teacher Plan) fully reflects the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers (as required in section 1111(b)(8)(C) of the ESEA);

Descriptor (a)(1). Describe, for each local educational agency (LEA) in the State, the systems used to evaluate the performance of teachers and the use of results from those systems in decisions regarding teacher development, compensation, promotion, retention, and removal;

Indicator (a)(3). Indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion;

Indicator (a)(4). Provide, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level;

Indicator (a)(5). Indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level are publicly reported for each school in the LEA;

Descriptor (a)(2). Describe, for each LEA in the State, the systems used to evaluate the performance of principals and the use of results from those systems in decisions regarding principal development, compensation, promotion, retention, and removal;

Indicator (a)(6). Indicate, for each LEA in the State, whether the systems used to evaluate the performance of principals include student achievement outcomes or student growth data as an evaluation criterion; and

[9] Research supports the effectiveness of well-designed programs that expand learning time by a minimum of 300 hours per school year. (See Frazier, Julie A.; Morrison, Frederick J. ''The Influence of Extended-year Schooling on Growth of Achievement and Perceived Competence in Early Elementary School.'' Child Development. Vol. 69 (2), April 1998, pp. 495–497 and research done by Mass2020.) Extending learning into before- and after-school hours can be difficult to implement effectively, but is permissible under this definition with encouragement to closely integrate and coordinate academic work between in-school and out-of school. (See James-Burdumy, Susanne; Dynarski, Mark; Deke, John. ''When Elementary Schools Stay Open Late: Results from The National Evaluation of the 21st Century Community Learning Centers Program.'' *http://www.mathematica-mpr.com/publications/redirect_PubsDB.asp?strSite=http://epa.sagepub.com/cgi/content/abstract/29/4/296.* Educational Evaluation and Policy Analysis, Vol. 29 (4), December 2007, Document No. PP07–121.)

Indicator (a)(7). Provide, for each LEA in the State whose principals receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of principals rated at each performance rating or level;

(b) *Improving collection and use of data.* A State must collect and publicly report information on the elements of its statewide longitudinal data system, on whether teachers receive data on student growth in a manner that is timely and informs instructional programs, and on whether teachers receive reports of individual teacher impact on student achievement. Specifically, a State must—

Indicator (b)(1). Indicate which of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act are included in the State's statewide longitudinal data system;

Indicator (b)(2). Indicate whether the State provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects in a manner that is timely and informs instructional programs; and

Indicator (b)(3). Indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments.

(c) *Standards and assessments.* A State must collect and publicly report data and other information on whether students are provided high-quality State assessments; whether students with disabilities and limited English proficient students are included in State assessment systems; whether the State makes information available regarding student academic performance in the State compared to the academic performance of students in other States; and the extent to which students graduate from high school in four years with a regular high school diploma and continue on to pursue a college education. Specifically, a State must—

Indicator (c)(1). Confirm the approval status, as determined by the Department, of the State's assessment system under section 1111(b)(3) of the ESEA with respect to reading/language arts, mathematics, and science assessments;

Indicator (c)(2). Confirm whether the State has developed and implemented valid and reliable alternate assessments for students with disabilities that are approved by the Department;

Indicator (c)(3). Confirm whether the State's alternate assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards;

Indicator (c)(4). Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides students with disabilities to ensure their meaningful participation in State assessments;

Indicator (c)(5). Confirm the number and percentage (including numerator and denominator) of students with disabilities who are included in State reading/language arts and mathematics assessments;

Indicator (c)(6). Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides limited English proficient students to ensure their meaningful participation in State assessments;

Indicator (c)(7). Confirm whether the State provides native language versions of State assessments for limited English proficient students that are approved by the Department;

Indicator (c)(8). Confirm the number and percentage (including numerator and denominator) of limited English proficient students who are included in State reading/language arts and mathematics assessments;

Indicator (c)(9). Confirm that the State's annual State Report Card (under section 1111(h)(1) of the ESEA) contains the most recent available State reading and mathematics National Assessment of Educational Progress (NAEP) results as required by 34 CFR 200.11(c);

Indicator (c)(10). Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), the number and percentage (including numerator and denominator) of students who graduate from high school using a four-year adjusted cohort graduation rate as required by 34 CFR 200.19(b)(1)(i);

Indicator (c)(11). Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage (including numerator and denominator) who enroll in an institution of higher education (IHE) (as defined in section 101(a) of the Higher Education Act of 1965, as amended (HEA)) within 16 months of receiving a regular high school diploma; and

Indicator (c)(12). Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.

(d) *Supporting struggling schools.* A State must collect and publicly report data and other information on the progress of certain groups of schools in the State on State assessments in reading/language arts and mathematics; on the extent to which reforms to improve student academic achievement are implemented in the persistently lowest-achieving schools in the State; and on the extent to which charter schools are operating in the State. Specifically, a State must—

Indicator (d)(1). Provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on the State assessments in reading/language arts and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress (as defined in this notice) on State assessments in reading/language arts in the last year;

Indicator (d)(2). Provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on State assessments in mathematics and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress on State assessments in mathematics in the last year;

Descriptor (d)(1). Provide the definition of ''persistently lowest-

achieving schools'' (consistent with the requirements for defining this term set forth in this notice) that the State uses to identify such schools;

Indicator (d)(3). Provide, for the State, the number and identity of the schools that are Title I schools in improvement, corrective action, or restructuring, that are identified as persistently lowest-achieving schools;

Indicator (d)(4). Provide, for the State, of the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring, the number and identity of those schools that have been turned around, restarted, closed, or transformed (as defined in this notice) in the last year;

Indicator (d)(5). Provide, for the State, the number and identity of the schools that are secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools;

Indicator (d)(6). Provide, for the State, of the persistently lowest-achieving schools that are secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year;

Indicator (d)(7). Provide, for the State and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law;

Indicator (d)(8). Confirm, for the State and for each LEA in the State that operates charter schools, the number of charter schools currently operating;

Indicator (d)(9). Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year;

Indicator (d)(10). Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in mathematics in the last year;

Indicator (d)(11). Provide, for the State and for each LEA in the State that operates charter schools, the number and identity of charter schools that have closed (including schools that were not reauthorized to operate) within each of the last five years; and

Indicator (d)(12). Indicate, for each charter school that has closed (including a school that was not reauthorized to operate) within each of the last five years, whether the closure of the school was for financial, enrollment, academic, or other reasons.

II. *State Plans:* A State receiving funds under the Stabilization program must develop and submit to the Department a comprehensive plan that includes the following information.

(a) *Indicator and descriptor requirements.* Except as discussed in paragraphs (c) and (d) of this section, the State must collect and publicly report the data or other information required by an assurance indicator or descriptor. To this end, the State must describe, for each assurance indicator or descriptor—

(1) The State's current ability to fully collect the required data or other information at least annually;

(2) The State's ability to fully publicly report the required data or other information, at least annually through September 30, 2011;

(3) If the State is not currently able to fully *collect,* at least annually, the data or other information required by the indicator or descriptor—

(i) The State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to fully collect the data or information, including—

(A) The milestones that the State establishes toward developing and implementing those means;

(B) The date by which the State expects to reach each milestone; and

(C) Any obstacles that may prevent the State from developing and implementing those means by September 30, 2011, including but not limited to requirements and prohibitions of State law and policy;

(ii) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means; and

(iii) The amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds; and

(4) If the State is not able to fully publicly report, at least annually through September 30, 2011, the data or other information required by the indicator or descriptor—

(i) The State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to fully publicly report the data or information, including—

(A) The milestones that the State establishes toward developing and implementing those means;

(B) The date by which the State expects to reach each milestone; and

(C) Any obstacles that may prevent the State from developing and implementing those means by September 30, 2011, including but not limited to requirements and prohibitions of State law and policy;

(ii) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means; and

(iii) The amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds.

(b) *Data or other information.* If the State is currently able to fully collect and publicly report the data or other information required by the indicator or descriptor, the State must provide the most recent data or information with its plan and publicly report that plan.

(c) *Requirements for indicators in reform area (b) (improving collection and use of data).*

(1) With respect to Indicator (b)(1), the State must develop and implement a statewide longitudinal data system that includes each of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act. To this end, the State must, in its plan—

(i) Indicate which of the 12 elements are currently included in the State's statewide longitudinal data system; and

(ii) If the State's statewide longitudinal data system does not currently include all 12 elements, describe—

(A) The State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, a statewide longitudinal data system that fully includes all 12 elements, including the milestones that the State establishes toward developing and implementing such a system, the date by which the State expects to reach each milestone, and any obstacles that may prevent the State from developing and implementing such a system by September 30, 2011 (including but not limited to requirements and prohibitions of State law and policy);

(B) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing such a system; and

(C) The amount of funds the State is using or will use to develop and implement such a system, and whether the funds are or will be Federal, State, or local funds.

(2) With respect to Indicator (b)(2), the State must provide student growth data on their students to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs. To this end, the State must—

(i) Indicate whether the State provides teachers with such data; and

(ii) If the State does not provide teachers with such data, describe—

(A) The State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to provide teachers with such data, including the milestones that the State establishes toward developing and implementing those means, the date by which the State expects to reach each milestone, and any obstacles that may prevent the State from developing and implementing those means by September 30, 2011 (including but not limited to requirements and prohibitions of State law and policy);

(B) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means; and

(C) The amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds.

(3) With respect to Indicator (b)(3), the State must—

(i) Indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments; and

(ii) If the State does not provide those teachers with such reports, describe—

(A) The State's process and timeline for developing and implementing the means to provide those teachers with such reports, including the milestones that the State establishes toward developing and implementing those means, the date by which the State expects to reach each milestone, and any obstacles that may prevent the State from developing and implementing those means (including but not limited to requirements and prohibitions of State law and policy);

(B) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means; and

(C) The amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds.

(d) *Requirements for Indicators (c)(11) and (c)(12).* With respect to Indicators (c)(11) and (c)(12), the State is required to, at a minimum, possess the ability to collect and publicly report the data. As a result, the requirements of paragraph (a) of this section apply to these indicators, at a minimum, with respect to the State's development of the means to collect and to publicly report the data. Accordingly—

(1) If, for either of these indicators, a State will develop *but not implement* the means to collect and publicly report the data (*i.e.,* the State will not collect and publicly report the data) by September 30, 2011, the State—

(i) Must submit a plan with respect to the indicator that addresses the requirements of paragraph (a) only with respect to the State's development of the means to collect and to publicly report the data, and not the State's implementation of those means; and

(ii) If submitting a plan in this manner, must include in its plan a description of the evidence it will provide to the Department of Education, by September 30, 2011, to demonstrate that it has developed the means to collect and publicly report that data.

(2) If, however, for either of these indicators, a State will develop *and implement* those means (*i.e.,* the State will collect and publicly report the data) by September 30, 2011, the State must submit a plan with respect to the indicator that fully addresses the requirements of paragraph (a).

(e) *General requirements.* The State must describe—

(1) The agency or agencies in the State responsible for the development, execution, and oversight of the plan, including the institutional infrastructure and capacity of the agency or agencies as they relate to each of those tasks;

(2) The agency or agencies, institutions, or organizations, if any, providing technical assistance or other support in the development, execution, and oversight of the plan, and the nature of such technical assistance or other support;

(3) The overall budget for the development, execution, and oversight of the plan;

(4) The processes the State employs to review and verify the required data and other information; and

(5) The processes the State employs to ensure that, consistent with 34 CFR 99.31(b), the required data and other information are not made publicly available in a manner that personally identifies students, where applicable.

Final Definitions

The Secretary establishes the following definitions for Stabilization program terms not defined in the ARRA (or, by reference, in the ESEA or the HEA). We may apply these definitions in any year in which this program is in effect.

For the purposes of this program, *publicly report* means that the data or information required for an indicator or descriptor are made available to anyone with access to an Internet connection without having to submit a request to the entity that maintains the data and information in order to access that data and information. Therefore, States are required to maintain a public Web site that provides the data and information that are responsive to the indicator and descriptor requirements. If a State does not currently provide the required data or information, it must provide on this Web site its plan with respect to the indicator or descriptor and its reports on its progress in implementing that plan.

With respect to the requirement that a State collect and publicly report on the extent to which students in high- and low-poverty schools in the State have access to highly qualified teachers, *highest-poverty school* means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the highest quartile of schools (at the State and LEA levels, respectively) using a measure of poverty determined by the State. Similarly, *lowest-poverty school* means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the lowest quartile of schools (at the State and LEA levels, respectively) using a measure of poverty determined by the State.

With respect to the requirements that a State indicate whether the systems used to evaluate the performance of teachers and principals include student achievement outcomes as an evaluation criterion, *student achievement outcomes* means outcomes including, at a minimum, one of the following: student performance on summative assessments, or on assessments predictive of student performance on summative assessments, in terms of absolute performance, gains, or growth; student grades; and rates at which students are on track to graduate from high school with a regular high school diploma.

With respect to the requirements that a State indicate whether teacher and principal evaluation systems include student growth data as an evaluation criterion and whether the State provides such data to, at a minimum, teachers of reading/language arts and mathematics

in grades in which the State administers assessments in those subjects, *student growth* means the change in achievement for an individual student between two or more points in time. For grades in which the State administers summative assessments in reading/language arts and mathematics, student growth data must be based on a student's score on the State's assessment under section 1111(b)(3) of the ESEA. A State may also include other measures that are rigorous and comparable across classrooms.

With respect to the requirement that a State collect and publicly report the number of high-school graduates who enrolled in a public IHE in the State who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment, *college credit (applicable to a degree)* is used as that term is defined by the IHE granting such credit.

With respect to the requirements that a State collect and publicly report the numbers and percentages of certain groups of schools that have made progress on State assessments in reading/language arts and in mathematics in the last year, *school that has made progress* means a school whose gains on the assessment, in the ''all students'' category and for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA), are equal to or greater than the average statewide school gains in the State on that assessment, in the ''all students'' category and for each student subgroup, except that if the average statewide school gains in the State on that assessment are equal to or less than zero, the gains of the school must be greater than zero.

With respect to the requirements that a State collect and publicly report data and information on the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring or secondary schools that are eligible for, but do not receive, Title I funds, *persistently lowest-achieving schools* means, as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

(b) To identify the lowest-achieving schools, a State must take into account both—

(1) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(2) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

With respect to the requirements that a State collect and publicly report, of the persistently lowest-achieving schools, the number and identity of schools that have been turned around, restarted, closed, or transformed through one of the following in the last year—

(a) *Turnaround model.* (1) A turnaround model is one in which an LEA must—

(i) Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;

(ii) Using locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students,

(A) Screen all existing staff and rehire no more than 50 percent; and

(B) Select new staff;

(iii) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;

(iv) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(v) Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new ''turnaround office'' in the LEA or SEA, hire a ''turnaround leader'' who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;

(vi) Use data to identify and implement an instructional program that is research-based and ''vertically aligned'' from one grade to the next as well as aligned with State academic standards;

(vii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;

(viii) Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and

(ix) Provide appropriate social-emotional and community-oriented services and supports for students.

(2) A turnaround model may also implement other strategies such as—

(i) Any of the required and permissible activities under the transformation model; or

(ii) A new school model (*e.g.,* themed, dual language academy).

(b) *Restart model.* A restart model is one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process. (A CMO is a non-profit organization that operates or manages charter schools by centralizing or sharing certain functions and resources among schools. An EMO is a for-profit or non-profit organization that provides ''whole-school operation'' services to an LEA.) A restart model must enroll, within the grades it serves, any former student who wishes to attend the school.

(c) *School closure.* School closure occurs when an LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.

(d) *Transformation model.* A transformation model is one in which

an LEA implements each of the following strategies:

(1) *Developing and increasing teacher and school leader effectiveness.*

(i) *Required activities.* The LEA must—

(A) Replace the principal who led the school prior to commencement of the transformation model;

(B) Use rigorous, transparent, and equitable evaluation systems for teachers and principals that—

(*1*) Take into account data on student growth (as defined in this notice) as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduation rates; and

(*2*) Are designed and developed with teacher and principal involvement;

(C) Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high-school graduation rates and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(D) Provide staff with ongoing, high-quality, job-embedded professional development (*e.g.,* regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies; and

(E) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school.

(ii) *Permissible activities.* An LEA may also implement other strategies to develop teachers' and school leaders' effectiveness, such as—

(A) Providing additional compensation to attract and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(B) Instituting a system for measuring changes in instructional practices resulting from professional development; or

(C) Ensuring that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority.

(2) *Comprehensive instructional reform strategies.*

(i) *Required activities.* The LEA must—

(A) Use data to identify and implement an instructional program that is research-based and ''vertically aligned'' from one grade to the next as well as aligned with State academic standards; and

(B) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students.

(ii) *Permissible activities.* An LEA may also implement comprehensive instructional reform strategies, such as—

(A) Conducting periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;

(B) Implementing a schoolwide ''response-to-intervention'' model;

(C) Providing additional supports and professional development to teachers and principals in order to implement effective strategies to support students with disabilities in the least restrictive environment and to ensure that limited English proficient students acquire language skills to master academic content;

(D) Using and integrating technology-based supports and interventions as part of the instructional program; and

(E) In secondary schools—

(*1*) Increasing rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement or International Baccalaureate; or science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers, including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;

(*2*) Improving student transition from middle to high school through summer transition programs or freshman academies;

(*3*) Increasing graduation rates through, for example, credit-recovery programs, re-engagement strategies, smaller learning communities, competency-based instruction and performance-based assessments, and acceleration of basic reading and mathematics skills; or

(*4*) Establishing early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.

(3) *Increasing learning time and creating community-oriented schools.*

(i) *Required activities.* The LEA must—

(A) Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and

(B) Provide ongoing mechanisms for family and community engagement.

(ii) *Permissible activities.* An LEA may also implement other strategies that extend learning time and create community-oriented schools, such as—

(A) Partnering with parents and parent organizations, faith- and community-based organizations, health clinics, other State or local agencies, and others to create safe school environments that meet students' social, emotional, and health needs;

(B) Extending or restructuring the school day so as to add time for such strategies as advisory periods that build relationships between students, faculty, and other school staff;

(C) Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment; or

(D) Expanding the school program to offer full-day kindergarten or pre-kindergarten.

(4) *Providing operational flexibility and sustained support.*

(i) *Required activities.* The LEA must—

(A) Give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

(B) Ensure that the school receives ongoing, intensive technical assistance and related support from the LEA, the SEA, or a designated external lead partner organization (such as a school turnaround organization or an EMO).

(ii) *Permissible activities.* The LEA may also implement other strategies for providing operational flexibility and intensive support, such as—

(A) Allowing the school to be run under a new governance arrangement, such as a turnaround division within the LEA or SEA; or

(B) Implementing a per-pupil school-based budget formula that is weighted based on student needs.

If a school identified as a persistently lowest-achieving school has implemented, in whole or in part within the last two years, an intervention that meets the requirements of the turnaround, restart, or transformation models, the school may continue or complete the intervention being implemented.

With respect to the requirement that schools using a turnaround model or a transformation model have increased learning time, *increased learning time* means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects, including English, reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects.[10]

Final Approval Criteria

The Secretary establishes the following criteria for approving the plan of a State receiving funds under the Stabilization program. We may apply one or more of these criteria in any year in which this program is in effect.

(a) *Quality of the State plan.* Except as described in paragraph (b), in determining the quality of the plan submitted by a State, we consider the following:

(1) Whether the plan clearly and accurately describes the State's abilities to collect and to publicly report the data or other information required by an assurance indicator and descriptor; and

(2) If the State is not currently able to fully collect and publicly report the data or information required by an indicator or descriptor—

(i) Whether the timeline and process for developing and implementing the means to fully collect and publicly report the data or information are reasonable and sufficient to comply with the requirement;

(ii) Whether any obstacles identified by the State as preventing it from developing and implementing the means to fully collect and publicly report the data or information by September 30, 2011 are sufficient to justify a delay in complying with the requirement; and

(iii) Whether the reports that the State will provide to the public will be appropriately accessible and will sufficiently indicate the State's progress in developing and implementing the means to comply with the requirement.

(b) *Quality of the State plan with respect to indicators in reform area (b) (improving collection and use of data).* In determining the quality of the plan submitted by a State as it relates to the indicators in reform area (b), we consider the following:

(1) Whether the plan clearly and accurately describes the State's ability to meet the plan requirement for the indicator (*i.e.,* in the case of Indicator (b)(1), the requirement to develop and implement a statewide longitudinal data system that includes each of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act; and in the case of Indicator (b)(2), the requirement to provide student growth data on their students to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs); and

(2) If the State does not currently meet the plan requirement for the indicator—

(i) Whether the timeline and process for developing and implementing the means to meet the requirement are reasonable and sufficient to comply with the requirement;

(ii) Excluding Indicator (b)(3), whether any obstacles identified by the State as preventing it from developing and implementing the means to meet the requirement by September 30, 2011 are sufficient to justify a delay in complying with the requirement; and

(iii) Whether the reports that the State will provide to the public will be appropriately accessible and will sufficiently indicate the State's progress in developing and implementing the means to comply with the requirement.

(c) *Adequacy of the State plan.* In determining the adequacy of the plan submitted by a State, we consider the following:

(1) Whether the institutional infrastructure and capacity of the agency or agencies responsible for the development, implementation, and oversight of the plan, together with any technical assistance or other support provided by other agencies, institutions, or organizations, are adequate to comply with the indicator and descriptor requirements individually and as a whole;

(2) Whether the funds the State is using or will use are adequate to comply with the indicator and descriptor requirements both individually and as a whole;

(3) Whether the processes the State employs to review and verify the required data and information are adequate to ensure that the data and information are accurate and of high quality; and

(4) Whether the processes the State employs are adequate to ensure that, where applicable, the required data and other information are not made publicly available in a manner that personally identifies students.

Executive Order 12866:

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the Executive Order, it has been determined that this regulatory

[10] Research supports the effectiveness of well-designed programs that expand learning time by a minimum of 300 hours per school year. (See Frazier, Julie A.; Morrison, Frederick J. ''The Influence of Extended-year Schooling on Growth of Achievement and Perceived Competence in Early Elementary School.'' Child Development. Vol. 69 (2), April 1998, pp. 495–497 and research done by Mass2020.) Extending learning into before- and after-school hours can be difficult to implement effectively, but is permissible under this definition with encouragement to closely integrate and coordinate academic work between in school and out of school. (See James-Burdumy, Susanne; Dynarski, Mark; Deke, John. ''When Elementary Schools Stay Open Late: Results from The National Evaluation of the 21st Century Community Learning Centers Program.'' *http://www.mathematica-mpr.com/publications/redirect_PubsDB.asp?strSite=http://epa.sagepub.com/cgi/content/abstract/29/4/296.* Educational Evaluation and Policy Analysis, Vol. 29 (4), December 2007, Document No. PP07–121.)

action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through SFSF will exceed that amount. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of the Executive Order.

The costs of this regulatory action have been reviewed in accordance with Executive Order 12866. Under the terms of the Order, the Department has assessed the costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these requirements, the Department has determined that the benefits of the requirements exceed the costs. The Department also has determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Need for Federal Regulatory Action

These requirements, definitions, and approval criteria are needed to implement the State Fiscal Stabilization Fund program in a manner that the Secretary believes will best enable the program to achieve its objectives of supporting meaningful education reforms in the States while helping to stabilize State and local budgets and minimize reductions in education and other essential services. In particular, the requirements, definitions, and approval criteria included in this notice are necessary to advance the four key educational reforms listed in the ARRA, particularly by ensuring better reporting and more public availability of information on the progress of implementation in each of the four reform areas. The requirement for each State to establish a longitudinal data system that includes the elements specified in the America COMPETES Act will have an especially significant impact on the availability of data that can be used in developing and improving programs; targeting services; developing better linkages between preschool, elementary and secondary schools, and postsecondary systems, agencies, and institutions; and holding schools, LEAs, and institutions accountable for their performance. Establishment of such a system by each participating State is also required under the ARRA.

Further, the requirement for each State to provide student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs, reflects a need to ensure that teachers have better data on how well they are educating their students, and that school and LEA leaders have valuable information that they can use in developing and providing professional development opportunities, assigning teachers, and implementing compensation and other human capital policies.

The definitions included in this notice are necessary to give clearer meaning to some of the terms used in the descriptions of the requirements and approval criteria. The approval criteria themselves are needed in order to provide for a clear and objective set of standards that the Secretary will use in ensuring that each State, before receiving the remainder of its Stabilization program allocation, has in place a plan for collecting and publicly reporting the required data and meeting the other requirements in this notice.

Regulatory Alternatives Considered

A likely alternative to promulgation of the types of requirements, definitions, and approval criteria in this notice would be for the Secretary to release the remaining Stabilization program funds without establishing specific reporting or other requirements. Under such a scenario, participating States would still be required to meet the statutory requirements (that is, to take actions to improve teacher effectiveness and the equitable distribution of highly qualified teachers, establish statewide longitudinal data systems that include the elements specified in the America COMPETES Act, enhance the quality of their standards and assessments, ensure the inclusion of students with disabilities and limited English proficient students in their assessments, and take steps to improve consistently low-performing schools), but there would be no assurance of consistent and complete reporting of States' progress and no uniform mechanism for measuring and comparing States' performance. Additionally, the need for teachers to obtain better information on their students' educational progress would likely be unfulfilled.

Summary of Costs and Benefits

The Department has analyzed the costs of complying with these final requirements. Some of the costs will be minimal and others more significant. As an example of a requirement that will result in minimal burden and cost, States are currently required to report annually, through ED*Facts* (the Department's centralized data collection and warehousing system), for the State as a whole and for each LEA, the number and percentage of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified. Indicator (a)(1) requires that they confirm the data they have reported, which should not be a time-consuming responsibility. As a second example, the requirement to confirm the approval status of the State's assessment system under section 1111(b)(3) of the ESEA, as determined by the Department, should also require minimal effort.

General Discussion of Comments

Other requirements will impose significant new costs. Many commenters asserted that the volume of the proposed data collection requirements would constitute an unreasonable, unrealistic task for States and LEAs, particularly in light of strained budgets and reductions in personnel. Two commenters acknowledged that some data requirements would be appropriate in light of such an investment as the SFSF; they contended, however, that the proposed requirements would go beyond what they considered appropriate. Commenters variously recommended generally reducing the data requirements, allowing sampling, increasing reporting time, and adding support for school and LEA capacity-building specifically to meet data collection and reporting requirements. One commenter argued that, while the commenter's State could complete the plan as required, the State could not actually carry out all data collection activities in the plan.

While we understand the fiscal challenges that face numerous States and LEAs, we strongly believe that the benefits to the public of these requirements outweigh the State and local implementation costs. Specifically, the major benefit of these requirements, taken in their totality, is better and more publicly available information on the status of activities related to the reform areas identified in the authorizing statute for the Stabilization program. As described in detail later in this section, research indicates or suggests that progress on each of the reforms will contribute to improved student outcomes. The provision of better information (on teacher qualifications, teacher and principal evaluation systems, State student longitudinal data systems, State standards and assessment systems, student success in high-school and postsecondary education, efforts to turn around persistently lowest-achieving schools, and charter school

reforms) to policymakers, educators, parents, and other stakeholders will assist in their efforts to further the reforms. In addition, State reporting of these data will help the Department determine the impact of the unprecedented level of funding made available by the ARRA. Further, the data and plans that States submit will inform Federal education policy, including the upcoming reauthorization of the ESEA.

While several commenters expressed concern regarding the lack of funds available to States to comply with the data requirements, emphasizing that States have recently had to make severe budget cuts, States will be able to draw on Federal resources in meeting some of the requirements. For example, the requirements that would result in the most significant costs are related to the implementation of a State data system that can track individual student transitions from high school to college. As one commenter noted, Federal funds that States receive from the Statewide Longitudinal Data Systems Grant program, through which the Department has made over $187 million available since fiscal year 2005, may be used to meet this requirement. The ARRA provided an additional $250 million for that program, and the Administration's budget request for fiscal year 2010 includes an additional $65 million. In addition, it is important to note that States may use funds available through the Stabilization program's Government Services Fund (over $8.8 billion) to develop and implement the systems necessary to report on these performance indicators.

Some commenters argued that the Stabilization Government Services Fund will not be sufficient to cover the expenses of complying with these requirements. Three commenters added that the Department should not add data requirements unknown at the time States obligated the Stabilization funds. A few commenters contended that, in accordance with congressional intent, States have used or will use SFSF funds to help avoid severe reductions in State services and layoffs of State-funded employees, including in the educational system. One of these commenters further explained that, even with Stabilization funds, the LEAs in the commenter's State must still implement severe budget cuts. Another explained that other Federal programs requiring States to collect data provide administrative funds for this purpose. Numerous commenters asserted that much time has already been spent collecting and reporting data related to SFSF Phase I. Two commenters expressed appreciation for the relief SFSF funds have provided to LEAs, but noted that States received no portion of the Education Fund resources. The Department appreciates the perspective captured in these comments but continues to believe that Stabilization funds should be used to save and create jobs as well as to advance education reform, and has clearly stated those objectives since the passage of the ARRA. As stated earlier, the Department is requiring States to report on the particular indicators and descriptors presented in this notice in the interest of advancing reform in a transparent manner.

The Department recognizes, however, that the proposed requirements would have required more effort than may be reasonable for States at this time. Therefore, the Department has made a key change from the proposed requirements to reduce the estimated cost of the final requirements. In the NPR, the Department proposed to require each State to provide teachers of reading/language arts and mathematics with data on the performance of their students that includes estimates of individual teacher impact on student achievement and, if the State does not do so, to describe a process and timeline for doing so by September 30, 2011. The final requirements provide, instead, for States to provide student growth data to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.[11] The Department expects that this requirement will be significantly less costly to implement.

One commenter warned that, without ongoing funds to maintain, for example, the longitudinal data system, the modifications to student assessments, or the Federal reporting requirements, these requirements will create a ''funding cliff'' in fiscal year 2011. The Department encourages States to consider ways that these funds may be invested so as to minimize the impact of the end of the period of availability of the Stabilization funds, and disagrees with another commenter who argued that these requirements constitute an unfunded mandate. States and LEAs may use a share of these or other resources to respond to these requirements, and the Department expects that Government Services funds as well as State administrative funds from other programs, including Title II, Part A, can be used as appropriate to meet these requirements. Two additional commenters urged the Department to allow States to report that they will use funds from Race to the Top to comply with the requirements established in this notice; the Department encourages States that apply for Race to the Top grants to consider how those funds may be used to meet these requirements while also meeting the criteria for Race to the Top.

The following is a detailed analysis of the estimated costs of implementing the specific final requirements, followed by a discussion of the anticipated benefits. The costs of implementing specific paperwork-related requirements are also shown in the tables in the Paperwork Reduction Act of 1995 section of this notice.

Distribution of Highly Qualified Teachers

Section 14005(d)(2) of the ARRA requires a State receiving funds under the Stabilization program to assure, in the Stabilization program application, that it will address inequities in the distribution of highly qualified teachers. In response to this requirement, the Department is requiring States to confirm, for the State and for each LEA in the State, the number and percentage of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified. Because States will have previously submitted this information to the Department through the ED*Facts* system, we anticipate that the costs of complying with this requirement would be minimal. A State likely would need only to ensure that it had correctly aggregated and reported data received from its LEAs. The Department expects that each State would require one hour of staff time to complete this effort, at a cost of $30 per hour.[12] For the 50 States, the District of Columbia, and Puerto Rico, the total estimated level of effort would be 52 hours at a cost of $1,560. In addition, the final requirements provide for States to indicate whether the State's Teacher Equity Plan (a part of the State's Highly Qualified Teacher Plan) has been updated to fully reflect the steps the State is currently taking to ensure that

[11] The final requirements, however, still require States to indicate whether they provide reports of individual teacher impact on student achievement and, if they do not, to provide a plan for doing so.

[12] Some commenters argued that we should use a higher estimate than $30 per hour of State effort but did not provide specific alternate estimates. We believe that $30 is a reasonable estimate of the national average cost of staff time in State educational agencies; it is also the estimate the Department has used in other regulatory cost estimates. We recognize, however, that actual costs will vary across States.

students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers. The Department expects that this will require an hour of effort, for a total estimated burden of 52 hours at a cost of $1,560.

Teacher and Principal Evaluation Systems

Section 14005(d)(2) also requires States to take actions to improve teacher effectiveness. To accomplish that goal, States must first have a means of assessing teacher success. A limited number of States have implemented statewide teacher and principal evaluation systems, while in the other States the responsibility for evaluating teachers and principals rests with the LEAs or schools. Little is known about the design of these systems across the Nation, but the collection and reporting of additional information would create a resource that additional States and LEAs can draw on in building their own systems. The Department, therefore, proposes to require States to collect and publicly report information about these evaluation systems.

Specifically, the Department is requiring that States describe, for each LEA in the State, the systems used to evaluate the performance of teachers and principals. Further, the Department proposes to require States to indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers and principals include student achievement outcomes or student growth data as an evaluation criterion.

The level of effort required to respond to these requirements would likely vary depending on the types of teacher and principal evaluation systems in place in a given State or LEA. The Department believes that, if a system is in place at the State level, the response burden would be low, because the State will have the required information readily available. According to the National Council on Teacher Quality, 12 States require LEAs to use a State-developed instrument to evaluate teachers or to develop an equivalent instrument that must be approved by the State.[13] For these 12 States, the Department estimates that a total of 72 hours (6 hours per State) would be required to respond to these requirements, for a total cost, at $30 per hour, of $2,160. The 2,632 LEAs located in these States would not be involved in the response to these requirements.

In the 40 States that do not have statewide teacher and principal evaluation systems in place, the level of effort required would likely be significantly higher. For each of these States, the Department estimates that 360 hours would be required at the State level to develop and administer a survey of LEAs (including designing the survey instrument, disseminating it, providing training or other technical assistance to LEAs on completing the survey, collecting the data and other information, checking accuracy, and public reporting), which would amount to a total of 14,400 hours and a total estimated State cost of $432,000 (assuming, again, a cost per hour of $30). While one commenter asserted that a survey will not suffice to collect these data annually, the Department expects that a survey is all that would be necessary for a State to collect this information. The 12,368 LEAs located in these States would bear the cost of collecting and reporting the data to their States.

For the purpose of the burden estimates in this section, the Department estimates that 75 percent of these LEAs (9,276) have centralized teacher and principal evaluation systems in place. For those LEAs, we estimate that 3 hours would be required to respond to these requirements. For the estimated 3,092 LEAs that do not have a centralized evaluation system in place, we estimate that 2 hours would be required because we expect that these systems are less complex than centralized systems. The Department, thus, estimates that LEAs would need to spend a total of 34,012 hours to respond to these proposed requirements at a total cost of $850,300. In the NPR, we invited commenters to provide information on the prevalence of these systems in LEAs (so that we could further refine our estimates) and on the potential costs of meeting the requirements for LEAs that have or do not have such a system, but we did not receive any comments on these issues. As a result, we are retaining the estimates that we included in the NPR for these metrics.

The Department is also requiring States to provide, for each LEA in the State whose teachers and principals receive performance ratings or levels through an evaluation system, the number and percentage of teachers and principals rated at each performance rating or level, as well as a description of how each LEA uses results from those systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal. Finally, the Department is requiring States to indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage of teachers rated at each performance rating or level are publicly reported for each school in the LEA. One commenter expressed the belief that LEAs will have to develop Web sites to post information on their evaluation systems. The Department expects that many LEAs that make this information publicly available will choose to do so on their pre-existing Web site; if any LEAs currently do not have Web sites, they may create a Web site or may publicly report this information in another easily accessible format.

We were unable to find nationally representative information on whether LEAs will have information on their teacher and principal evaluation systems readily available in a centralized database and, therefore, invited comment on this issue. Though at least one commenter asserted that the request was reasonable, many commenters argued that the cost and time to comply with these data requirements would far exceed the estimates in the NPR. One commenter directed us to a study by the New Teacher Project (NTP),[14] which analyzed the teacher evaluation systems of a sample of 12 LEAs. Of those 12 LEAs, only 4 tracked teacher evaluation results electronically. Although the NTP report examined only a small number of LEAs, which were not nationally representative, we base our cost estimates on this finding, as it is the only source of information available. Thus, we assume that 33 percent of LEAs will have information on the teacher and principal evaluation results in a central database.[15] Applying this percentage to the estimated 11,908 LEAs that have in place a centralized system to evaluate teacher and principal performance (which includes the 2,632 LEAs in States with statewide systems, as well as the estimated 9,276 LEAs in other States that have their own local systems), the Department estimates that 3,930 LEAs would need to spend 3 hours each to respond to these requirements for a total burden of

[13] *State Teacher Policy Yearbook: 2008,* page 68. *http://www.nctq.org/stpy08/reports/stpy_national.pdf.*

[14] *See http://widgeteffect.org/downloads/TheWidgetEffect.pdf.*

[15] It is important to note that this study includes in its sample only medium-size and large LEAs and, therefore, that the actual percentage of LEAs with teacher and principal evaluation results in a central database may be lower than 33 percent. We also believe, however, that small LEAs with fewer teachers and principals would require less effort than a medium-size or large LEA to comply with these requirements.

11,790 hours and $294,750. One commenter suggested that the Department include in this estimate the cost of LEAs participating in training from the State on how to respond to these requirements; this estimate of 3 hours includes 1 hour per LEA for such training. The Department downwardly revised the LEA-level estimate of burden for these LEAs from 5 hours per LEA in the NPR to 3 hours per LEA because we are now assuming that these LEAs not only have this information available in the central office but also that the information is available electronically, which would further simplify the process.

We estimate that each of the other 7,978 LEAs will require significantly more time to respond. One commenter suggested that we estimate LEA burden for the requirements regarding the number and percentage of teachers and principals rated at each performance rating or level by considering the number of teachers, assuming that all evaluation results would need to be entered and aggregated at the LEA level, which would require ten minutes per individual. This commenter also recommended that we use the estimate of 3.6 million public school teachers nationwide to determine the level of LEA effort required. We agree with this commenter's point that the estimate of LEA burden for these requirements should consider the number of teachers in the LEA; however, according to the Digest of Education Statistics, there are approximately 3.2 million teachers and 87,620 principals in public elementary and secondary schools.[16] [17] Based on this figure, we estimate that an average LEA employs 213 teachers and 6 principals. Applying this number of teachers and principals to the estimated 7,978 LEAs nationwide that do not have this information electronically in a central system, we estimate that these LEAs will need to enter data for 1,699,314 teachers and 47,868 principals into their existing personnel systems. Using the commenter's estimate that LEAs could enter information for 6 individuals per hour, we estimate that these LEAs would have a combined burden of 291,197 hours at a cost of $7,279,925.

We further estimate that all 15,000 LEAs would each require 1 hour to describe how they use results from teacher and principal evaluation systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal.

The Department, therefore, estimates the total LEA burden for these requirements to be 317,987 hours across the Nation at an estimated total cost of $7,949,675 (assuming a cost per hour of $25).

States would then need to collect these data, most likely by including these items in the survey instrument that they will develop to respond to the other requirements in this section, and will then need to aggregate and publicly report the data on their Web site. We estimate that these activities will require 8 hours of effort per State, for a total burden of 416 hours at a cost of $12,480. We further estimate that it will cost each State $10,000 to establish and maintain a Web site to which it will post all of the data required by this notice, including the requirements in this section. While one commenter expressed concern for States with large numbers of LEAs, the 8-hour estimate reflects average burden across all States, including those with high and low numbers of LEAs.

Many commenters reported that complying with the teacher and principal evaluation data requirements will significantly burden States and LEAs. One commenter emphasized that the commenter's State does not currently collect any of the information included in these requirements. Some commenters elaborated that collecting these data will require extensive communication and follow-up between States and LEAs. One commenter recommended that States be permitted to sample their LEAs, and another commenter suggested that, while the estimates may be fairly accurate, these data requirements will negatively affect a State's ability to complete the application within the required timeframe.

The Department agrees that States and LEAs will be required to make an effort to meet these requirements, and that the level of effort will vary across the States and their LEAs. We believe that the availability of these data will benefit parents and their children and that the benefits of collecting and reporting this information outweigh the costs. Further, we believe that parents with children in every LEA across the Nation deserve to have access to this information and, therefore, decline to allow States or LEAs to sample their teachers and principals in responding to these requirements.

Another commenter recommended that the Department identify the most effective teacher and principal evaluation systems and provide States with a tool for collecting the teacher and principal data. The Department may, in the future, assess teacher and principal evaluation systems, but does not believe State collection and reporting of data on their systems should await completion of such an effort.

Two commenters expressed particular concern for the effort required of small, rural LEAs, but we expect that collecting this information will be a simple process for small LEAs (which typically operate few schools and employ few teachers and principals), so we do not provide separate estimates for them here. Lastly, two commenters contended that the estimates do not account for the data systems that LEAs will have to develop to collect this information. We assume that LEAs will add a data element to an existing data system and, therefore, do not believe that it is appropriate to assume the need for development of data systems for the purpose of these estimates.

For more detailed estimates of costs for these requirements, please see the tables in the *Paperwork Reduction Act of 1995* section of this notice.

State Data Systems

Section 14005(d)(3) requires States to assure that they will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act. To track State progress in this reform area, the Department requires each State to indicate which of the 12 elements are included in the State's statewide longitudinal data system. The costs of reporting this information should be minimal. Moreover, most States are already reporting information on ten of the 12 elements to the Data Quality Campaign, a national effort to encourage State policymakers to use high-quality education data to improve student achievement. The Department expects that States will be able to readily provide information on whether the two remaining elements are included in their data systems and that it should take little time for the States that have not been reporting to the Data Quality Campaign to provide information on their data systems. We, therefore, estimate that States would need only 2 hours to respond to this requirement, for a total level of effort of 104 hours at an estimated cost of $3,120.

The Department is also requiring that States report whether the State provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and

[16] *See http://nces.ed.gov/programs/digest/d08/tables/dt08_004.asp?referrer=list.* The most recent data available is from 2006.

[17] *See http://nces.ed.gov/programs/digest/d08/tables/dt08_086.asp.* The most recent data available is for the 2003–04 school year.

mathematics in grades in which the State administers assessments in those subjects in a manner that is timely and informs instructional programs. The Department believes that making such information available would help improve the quality of instruction and the quality of teacher evaluation and compensation systems. Under the State Plan section, we discuss the costs of developing systems for the provision of student growth data in all States. We are also requiring States to indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. The costs of merely publicly reporting on whether a State currently provides this information to teachers should be minimal. We estimate that each State would spend one hour to publicly report this information, for a total level of effort of 52 hours at a cost of $1,560.

State Assessments

In response to the requirement in section 14005(d)(4)(A) of the ARRA that States enhance the quality of their student assessments, the Department requires that the States confirm certain existing data and other information and submit some new information about their assessment systems. Specifically, the Department requires each State to confirm the approval status, as determined by the Department, of the State's assessment system (with respect to reading/language arts, mathematics, and science assessments). In addition, States will confirm that their annual State Report Card (issued pursuant to the requirements of section 1111(h) of the ESEA) contains the most recent available State reading and mathematics NAEP results. The Department estimates that each State would require two hours to respond to these requirements, for a total cost of $3,120.

Section 14005(d)(4)(B) requires States to assure that they will administer valid and reliable assessments for children with disabilities and limited English proficient students. To measure State progress on this assurance, the Department requires States to: confirm whether the State has developed and implemented valid and reliable alternate assessments for students with disabilities that have been approved by the Department; confirm whether the State's alternative assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards; indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides students with disabilities to ensure their meaningful participation in State assessments; indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides limited English proficient students to ensure their meaningful participation in State assessments; and confirm whether the State provides native language versions of State assessments for limited English proficient students. To respond to these five indicators, the Department estimates that the 50 States, the District of Columbia, and Puerto Rico would each require five hours, for a total cost of $7,800.

In addition, the Department requires that States confirm the number and percentage of students with disabilities and limited English proficient students who are included in State reading/language arts and mathematics assessments. The Department expects that each State would, on average, require one hour of staff time to complete this effort, at a cost of $30 per hour. The burden estimated for this requirement is minimal because the States will have already submitted this information to the Department through the ED*Facts* system. For the 50 States, the District of Columbia, and Puerto Rico, the total estimated level of effort would be 52 hours at cost of $1,560.

High School and Postsecondary Success

Section 14005(d)(4)(C) of the ARRA requires States to assure, in their Stabilization Fund applications, that they take steps to improve their State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(A)(ii) of the COMPETES Act, which calls for States to identify and make any necessary changes to their secondary school graduation requirements, academic content standards, academic achievement standards, and the assessments students take preceding graduation from secondary school in order to align those requirements, standards, and assessments with the knowledge and skills necessary for success in academic credit-bearing coursework in postsecondary education, in the 21st century workforce, and in the Armed Forces without the need for remediation. Several of the indicators and descriptors in this notice are aligned with this provision of the America COMPETES Act.

First, the Department requires each State to publicly report, for the State and each LEA and high school in the State and, at each of these levels, by student subgroup,[18] the number and percentage of students who graduate from high school as determined using the four-year adjusted cohort graduation rate. The Department believes that State efforts to comply with the Department's October 29, 2008 regulation requiring the use of a four-year adjusted cohort graduation rate in the determination of adequate yearly progress under Title I of the ESEA are now underway (see 34 CFR 200.19(b)(1)(i)). Some additional effort would be required to collect and report these data for all schools as the current regulations apply only to Title I schools.

Based on the Data Quality Campaign's 2008 survey of the 50 States and the District of Columbia, which found that 42 States have the capacity to calculate the National Governors Association longitudinal graduation rate,[19] the Department believes that most States are well-situated to collect and publicly report these data, or have the processes underway to make such reporting possible by September 30, 2011. In fulfillment of the requirement, the Department estimates that States would need to distribute to non-Title I LEAs the survey instrument they are using to collect this information from Title I LEAs and to input the data from these surveys, which would require an estimated 8 hours per State. The new LEA burden to respond to this indicator would be limited to the approximately 976 LEAs that do not receive Title I funds.[20] The Department estimates that these LEAs would spend an average of 40 hours to respond to this indicator for a total LEA effort of 39,040 hours. The total estimated cost is, therefore, $976,000.

In addition, the Department is requiring States to publicly report, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup, the number and percentage of students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in an IHE within 16 months of receiving a regular high school diploma and, of those students who

[18] As noted earlier in this notice, the student subgroups include: economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, and students with disabilities.

[19] *http://www.dataqualitycampaign.org/survey.*

[20] According to data States submitted to the Department through the Consolidated State Performance Report 2007–08, there are a total of 15,016 LEAs across the Nation, 14,040 of which receive Title I, Part A funds.

enroll in a public IHE within the State, the number and percentage who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE. The requirements would entail considerable coordination among high schools, LEAs, SEAs, and IHEs. The Department expects that SEAs would have to develop a system to make this data collection and sharing possible, which they could at least partially achieve by establishing a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the COMPETES Act. As discussed earlier, section 14005(d)(3) of the ARRA requires States to assure, in their Stabilization Fund application, that they will establish such a data system.

One commenter expressed concern that, according to the 2008 Data Quality Campaign survey, only 28 States reported the ability to share data with postsecondary institutions. While that may be true, several of the data elements described in section 6401(e)(2)(D) of the COMPETES Act require data systems to include linkages to postsecondary institutions, and States assured that they would implement a data system with these elements in place when they applied for Phase I Stabilization funds. Several commenters contended that many LEAs currently lack the infrastructure and data collection systems necessary to comply with the requirements proposed in the NPR. One commenter explained that many of the requirements presume that States already have P–20 data systems in place. These commenters correctly state that we do not include the costs of establishing such a system in the costs of these requirements. This exclusion is warranted because the requirement to establish such a system flows from the ARRA, not from these requirements.[21] In addition, States will be able to use Government Services funds that they receive as part of their Stabilization allocation to support these efforts, and may compete for funds from the Department's Statewide Longitudinal Data Systems Grant program. Further, the efforts of the National Student Clearinghouse (NSC), a non-profit organization that provides student enrollment and degree verification services, demonstrate that there is significant interest in information sharing between IHEs and LEAs; more than 3,300 colleges (which enroll over 92 percent of college students) and hundreds of LEAs participate in the NSC's efforts. The Department expects that LEAs and IHEs that currently provide data to this system may require less effort to respond to this requirement.

Two commenters requested that States be allowed to use the NSC to reduce burden; however, one commenter reported that use of the NSC would increase the cost of meeting these requirements. One commenter noted that the NSC collects only enrollment data. It is important to note that the Department mentions the NSC as a potential resource, but that States and IHEs are not encouraged or required to use it to meet these requirements.

With respect to the requirement on publicly reporting postsecondary enrollment, the Department expects that LEAs will need to enter, into their State's statewide longitudinal data system, data on each high-school graduate's plans after high school, including the IHE where the student intends to enroll, if applicable. According to the *Digest of Education Statistics,* approximately 2,492,000 students who graduated from public high schools enrolled in IHEs as first-time freshmen in fall 2007.[22] Holding that number constant, the Department estimates that LEAs will be able to enter data for these students at a pace of 20 students per hour which will result in a total level of LEA effort of 124,600 hours at a cost of $3,115,000. One commenter correctly pointed out that the tables in the *Paperwork Reduction Act of 1995* section in the NPR did not include this $3,115,000 in LEA burden; the Department has added this item to the table in this notice.

The State will then likely need to request that each IHE in the State confirm a student's enrollment, using the statewide longitudinal data system to obtain data on students who intended to enroll within the State. Based on data from the 2006 Integrated Postsecondary Education Data System (IPEDS), Spring 2007,[23] the Department estimates that 2,018,520 first-time freshmen (81 percent of all first-time freshmen who graduated from public high schools) enroll in IHEs in their home State. The Department estimates that IHEs will be able to confirm enrollment for 20 students per hour, for a total of 100,926 hours of IHE effort at a total cost of $2,523,150 (assuming a cost of $25 per hour).[24]

States will also likely need to request that IHEs outside the State confirm the enrollment of students who indicated that they would enroll in those institutions. Again, based on data from the 2006 IPEDS, Spring 2007, the Department estimates that 473,480 students who graduate from public high schools each year enroll in IHEs in States outside their home State. The Department estimates that it will take States 30 minutes per student to complete this process, including contacting out-of-State IHEs, obtaining the necessary information from them, and including data on those students in their public reports. One commenter argued that the estimate provided in the NPR accounts only for the data to be entered, whereas the burden relates more to obtaining the information rather than entering the data. However, our estimates include the effort involved in obtaining the data as well as entering it into the system. This element of the requirement, therefore, will result in a national total of 236,740 hours of State effort at a total cost of $7,102,200. As with students who enroll in IHEs in their home State, the Department estimates that IHEs will be able to confirm enrollment for 20 students per hour, for a total of 23,674 hours of IHE effort at a total cost of $591,850.

Finally, to meet the requirement that they publicly report the number of students who enroll in IHEs, States will need to aggregate the data received from all IHEs and will then need to run analyses and publicly report the data for the State, for each LEA, for each high school and, at each of these levels, by student subgroup. The Department estimates that each State will need 40 hours to conduct these analyses and publicly report these data, for a total State burden of 2,080 hours at a cost of $62,400.

The requirement that States publicly report the number of students enrolling

[21] We do acknowledge, however, that although the statute does not set a deadline for State establishment of the required data systems, paragraph (c)(2)(ii)(A) under the section of this notice entitled ''State Plans'' would require States to have in place statewide longitudinal data systems that fully include all 12 elements described in the COMPETES Act by September 30, 2011. Putting a full system in place by that date might increase costs to States or, alternatively, might reduce costs (if the more rapid establishment of a system results in efficiencies).

[22] According to the *Digest of Education Statistics,* 2008, almost 2.8 million first-time freshmen enrolled in IHEs in fall 2007. *See http://nces.ed.gov/programs/digest/d08/tables/dt08_198.asp.* Also according to the *Digest,* in fall 2005, 6,073,240 students were enrolled in private elementary and secondary schools. At that time, enrollment in public elementary and secondary schools was 49,113,298. Extrapolating from those data, the Department estimates that 11 percent of all first-time postsecondary students graduated from private schools. *See http://nces.ed.gov/programs/digest/d08/tables/dt08_058.asp.*

[23] *http://nces.ed.gov/programs/digest/d08/tables/dt08_223.asp.*

[24] Note that a table in the Paperwork Reduction Act of 1995 section of this notice provides the burden estimates by IHE, but that this narrative provides national estimates using the total number of students included in the data requirement.

in a public, in-State IHE who complete at least one year's worth of college credit applicable toward a degree within two years of enrollment at the IHE will also entail a collaborative process between SEAs and IHEs. Again, based on data from the *Digest of Education Statistics,* the Department estimates that 2,018,520 first-time freshmen enroll in IHEs in their home State. Based on additional data from the *Digest of Education Statistics,* we further estimate that 74 percent of students enrolled in degree-granting IHEs are enrolled in public IHEs.[25] We therefore estimate that 1,493,705 first-time freshmen enroll in public IHEs in their home State. Further, the Department estimates that, once a State has established a system for the collection and reporting of these data, IHEs will be able to enter data for 20 students an hour; thus, the total estimated level of effort to respond to this requirement will be approximately 74,685 hours of IHE effort at an estimated cost of $1,867,131, assuming a cost of $25 per hour.

Finally, as with the previous indicator, States will need to aggregate the data received from all IHEs and will then need to run analyses and publicly report the data for the State, LEA, and school levels and at each of these levels, by student subgroup. The Department estimates that each State will need 40 hours to conduct these analyses and publicly report these data, for a total State burden of 2,080 hours at a cost of $62,400.

Many commenters opposed the proposed requirements to collect information on high-school student college enrollment and course completion, particularly for those students enrolling in and completing courses at out-of-State IHEs. The Department strongly believes that the indicators in this section provide the best gauge for the extent to which students graduate from high school in four years with a regular high school diploma and continue on to pursue a college education. This information should be a central factor in evaluating the effectiveness of high schools in preparing young people for successful futures. However, to reduce the overall burden of complying with these requirements, the Department has removed the requirement that course completion data for students enrolling out-of-State be collected and reported.

Several commenters asserted that the cost and time to comply with the college enrollment and course completion data requirements would far exceed the estimates in the notice, but they did not provide alternate estimates. Further, one commenter questioned whether or not, after requiring States to invest significant cost and time building the capacity to collect these data, the Department would require States to submit them beyond 2011; the Department is not requiring States to submit data beyond 2011 at this time. One commenter detailed the necessary one-time development and planning, and annual, activities that collection of these data would require and contended that were not accounted for in the Department's cost estimate. The Department considers these costs to be requirements of maintaining a high-quality longitudinal data system and, therefore, does not include the effort involved in these steps in the burden estimates for these requirements.

Supporting Struggling Schools

A key goal of the ARRA is to ensure that States and LEAs provide targeted, intensive support and effective interventions to turn around the persistently lowest-achieving schools in the State. Section 14005(d)(5) requires States to ensure compliance with the Title I requirements in this area. To track State progress, the Department is requiring States to provide, for each LEA in the State and aggregated at the State level, the number and percentage of schools in improvement, corrective action, or restructuring that have made progress on State assessments in reading/language arts and mathematics in the last year, and, for the State, in the ''all students'' category and for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA), and, of the Title I schools in improvement, corrective action, or restructuring, the number and identity of the persistently lowest-achieving schools as defined by the State. The State is also required to provide the definition that it uses to identify its ''persistently lowest-achieving schools.'' States are also required to publicly report the number and identity of their Title I schools in improvement, corrective action, or restructuring that are identified as persistently lowest-achieving and, of those schools, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.

The Department believes that States will already have available the data needed to report on the indicators related to the total number and percentage of schools in improvement, corrective action, or restructuring that have made progress on State assessments, although they might need to run new analyses of the data. However, the Department expects that States will have to collect new data on the schools in improvement, corrective action, or restructuring (in general and in the persistently lowest-achieving schools) that have been turned around, restarted, closed, or transformed. (In addition, the State will need to define the term ''persistently lowest-achieving schools.'') We estimate that this data collection will entail two hours of effort in each of the 1,173 LEAs (the number of LEAs that, according to data reported to ED*Facts,* had at least one school in improvement, corrective action, or restructuring in the 2007–08 school year). As a result, the Department estimates that the total LEA burden for this requirement will be 2,346 hours at a cost of $58,650. States will then need to aggregate these data, in addition to the effort they will spend responding to the other indicators that relate to struggling schools. The Department estimates that each State will require 25 hours of effort to respond to these requirements, for a total cost of $39,000.

In addition, the Department is requiring States to provide, for the State, the number and identity of the secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools, and, of these schools, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year. The Department expects that some, but not all, States have the data required to determine the identity of secondary schools that are eligible for, but do not receive, Title I funds, but that they may have to run new analyses of the data to determine which of these schools have been turned around, restarted, closed, or transformed in the last year. Other States may have to include an item in the LEA survey that they will be distributing to respond to several of these requirements. The Department estimates that each State will require an average of 16 hours of effort to respond to these two requirements, for a total cost of $24,960. We further estimate that the 1,173 affected LEAs will need a total of 4 hours to respond to these two survey items.

Two commenters asserted that the cost and time to comply with the supporting struggling schools data requirements would exceed the estimates in the NPR. The Department declines to adjust these burden estimates as these commenters did not provide specific recommended revisions.

[25] *See http://nces.ed.gov/programs/digest/d08/tables/dt08_192.asp.*

Charter Schools

The Department believes that the creation and maintenance of high-quality charter schools is a key strategy for promoting successful models of school reform. To determine the level of State effort in this area, the Department proposes to require States to provide, at the State level and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law and the number that are currently operating. We expect that this information will be readily available and that States will need only a total of one hour to respond to these two requirements.

In addition, the Department will require States to provide, for the State and for each LEA in the State that operates charter schools, the number and percentage (including numerator and denominator) of charter schools that have made progress on State assessments in reading/language arts and mathematics in the last year. Finally, the Department is requiring States to provide, for the State and for each LEA in the State that operates charter schools, the number and identity of charter schools that have closed (including schools that were not reauthorized to operate) within each of the last five years and to indicate, for each such school, whether the closure was for financial, enrollment, academic, or other reasons. The Department believes that SEAs will likely also have this information readily available (although some may need to obtain additional information from their LEAs) and will need eight hours to publicly report it. The Department assumes that the effort to respond to these requirements will be limited to the 42 States (including the District of Columbia and Puerto Rico) that allow charter schools. The Department thus estimates that the State effort required to respond to these indicators will total 336 hours at a cost of $10,080.

State Plans

These requirements require States, as a condition of receiving their remaining funding for the Stabilization program, to submit a plan to the Department that describes the State's current ability to fully collect and publicly report data for the indicators and descriptors at least annually. If the State is currently able to fully collect and publicly report the data or other information required by the indicator or descriptor, the State must provide the most recent data or information with its plan. If a State is not currently able to fully collect and publicly report the required data or other information, the plan must describe the process that the State will undertake in order to have the means to fully collect and publicly report such data or information as soon as possible but no later than September 30, 2011.

As a part of this plan, the State will need to establish milestones and a date by which the State expects to reach each milestone, describe the nature and frequency of publicly available reports that the State will publish on its progress, and identify the amount and source (*i.e.,* whether Federal, State or local) of funds that will support the efforts necessary to collect and publicly report the data or information. The level of effort involved in preparing these elements of the plan will vary from State to State based on individual State progress in each reform area. For example, according to the Data Quality Campaign's 2008 survey of the 50 States and the District of Columbia, 48 States have ''a unique statewide student identifier that connects student data across key databases across years,'' 28 States have the ''[a]bility to match student-level pre-K–12 and higher education data,'' and 21 States have a ''statewide teacher identifier with a teacher-student match.'' States that have taken these steps have built a foundation for the efforts that will be necessary to meet some of the requirements and will likely need to spend less time completing these elements of their plans. The Department estimates that, in total, each of the 15 States that currently provides student growth information to teachers will need an average of 439 hours to prepare these sections of the plan, and that the other 37 States will require 547 hours; thus, the total hours that will be necessary to meet this requirement for the 50 States, the District of Columbia, and Puerto Rico would be 26,824 hours, for a total cost of $804,720. For more detailed estimates of costs for each specific requirement, please see the tables in the *Paperwork Reduction Act of 1995* section of this notice.

The final requirements provide for States to include in their plan under this program the State's Teacher Equity Plan if it was updated to fully reflect the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers. If the State has not updated the State's Teacher Equity Plan to fully reflect the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers, the State must do so as soon as possible but no later than September 30, 2011. Accordingly, the State must provide the date by which it will make its updated Teacher Equity Plan available to the public. The Department assumes that all States will need to revise their plan to reflect efforts they have made in this area as a result of the funds available to them through this program and estimates that the revisions will take 80 hours per State. The total State effort involved in meeting this requirement is, therefore, 4,160 hours at a total cost of $124,800 (assuming $30 per hour of State effort).

In addition, as part of the planning requirements, the Department is requiring each State to indicate whether it provides student growth data to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs and, if the State does not currently do so, to describe a process and timeline for doing so by September 30, 2011. The Department understands that at least 15 States currently provide this type of information to their teachers; the 15 States have been approved to use ''growth models'' to inform determinations of adequate yearly progress under the ESEA. However, additional States are implementing growth models for State-level accountability purposes, and most other States that are developing State longitudinal data systems have included teacher identifiers in those systems and, thus, have part of the infrastructure to produce and report these data.

The Department contacted several experts in an effort to accurately estimate the State cost of calculating student growth data. According to these experts, the State cost is not a function of the student enrollment in a State; the two drivers of cost are an alignment analysis of the proficiency levels of the State assessments and the new programming required in the State assessment results database to enable the State to generate growth estimates for individual students. These experts estimated that the cost per State would range from $100,000 to $500,000. Using these figures, the Department estimates that the total cost across the 37 States that the Department has not approved to implement growth models would range from $3,700,000 to $18,500,000.

In the NPR, the Department estimated that the State cost of estimating individual teacher impact on student achievement, including the cost of

analyzing the data, verifying with teachers that the correct teacher-subject-student connection is made in the system, and publishing the information online in a user-friendly format would be 2 dollars per student. Two commenters suggested that the cost of providing reading/language arts and mathematics teachers with student performance data is closer to $4 per student rather than the $2 per student estimated in the NPR, but these commenters included the cost of the data system in the $4 per student figure. As noted earlier, these estimates do not include the cost of the data system as that requirement flows from the ARRA, not these requirements. As a result, the Department considers that the estimate of $2 per affected student is a fair estimate of the cost of implementing the proposed requirement.

In addition, the Department estimated that 30 percent of all K–12 public school teachers are teaching reading/language arts or mathematics in the grades in which the State administers assessments and used this assumption to estimate that the State assessment results for approximately 14,790,000 students (30 percent of all students enrolled in public elementary and secondary schools) would be included in the calculations necessary for States to meet this requirement.[26] Based on data on public elementary and secondary student enrollment by grade, however, the Department now estimates that approximately 25,836,000 students are in tested grades.[27] Applying the revised number of students in tested grades to this estimate, the total State cost of this requirement would have been $51,672,000.

In the interest of reducing the overall costs of these requirements, the Department has decided to require States to provide (in a manner that is timely and informs instructional programs) student growth data, rather than estimates of individual teacher impact on student achievement to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects. The Department estimates that this change from the proposed to the final requirement in this section reduces the State burden by at least $34,000,000 and up to almost $49,000,000 (from $52,672,000 if we had required States to provide teachers with estimates of their impact, to between $3,700,000 and $18,500,000 now that we have changed the requirement to have States provide teachers with student growth data).

The Department is, however, requiring States to indicate whether they provide teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments, and, if the State does not provide those teachers with such reports, describe the State's process and timeline for developing and implementing the means to provide those teachers with such reports, including the milestones that the State establishes toward developing and implementing those means, the date by which the State expects to reach each milestone, and any obstacles that may prevent the State from developing and implementing those means. In addition, we are requiring States to describe the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means and the amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds. We estimate that these sections of the State plan will require an average of 129 hours for States to complete at a cost per State of $3,870. These amounts are included in the total estimated State burden of completing the plan.

The Department understands that an important element of State efforts to inform teachers of the estimated impact of their teaching on student achievement is providing professional development for principals and teachers on the interpretation and use of those data in raising student achievement. However, since the planning requirements would not require States to provide this professional development, we have not included its cost in the estimated costs of these requirements.

In addition, the Department is requiring States to describe in their plans the following: The entities responsible for the development, execution, and oversight of the plan; the agencies or organizations that will provide any technical assistance or other support that is necessary; the overall budget for the development, execution, and oversight of the plan; the processes that the State employs to review and verify the required data and other information; and the processes the State employs to ensure that, consistent with 34 CFR 99.31(b), the required data and other information are not made publicly available in a manner that personally identifies students, where applicable. The Department estimates that this management and oversight section of the plan will require 80 hours per State, for a total national estimate of 4,160 hours at a cost of $124,800. The total estimated cost to States of preparing the plans is, thus, $742,560.

Total Estimated Costs

The Department estimates that the total burden of responding to these requirements will be 294,076 hours and between $13,042,280 and $27,842,280 for SEAs, 522,677 hours and $13,066,925 for LEAs, and 199,285 hours and $4,982,131 for IHEs, for a total burden of 1,016,038 hours at a cost of between $31,091,336 and $45,891,336. Several commenters argued that the cost and time to comply with the data requirements would far exceed the estimates in the notice. Another commenter asserted that the Department underestimated the burden for the writing of a State plan, and another that the Department underestimated the burden for preparing the application. As noted elsewhere in this section of the notice, we revised our estimates of the burden involved in responding to Indicators (a)(4) and (a)(7). As these particular commenters did not provide alternate estimates of the effort involved with drafting a State plan or completing the application, we decline to revise our estimates of those requirements. Many commenters expressed concern that the estimates did not account for the development of or enhancements to current State and LEA data systems and software necessary to collect and report the data. We believe, however, that our estimates include the effort involved with collecting and reporting the data, and have added the estimate that States would need to spend an average of $10,000 to develop and maintain a Web site on which to post this information.

Benefits

The principal benefits of the requirements are those resulting from the reporting and public availability of information on each State's progress in the four reform areas described in the ARRA. The Department believes that the information gathered and reported as a result of these requirements will improve public accountability for performance, help States, LEAs, and schools learn from one another and

[26] According to the *Digest of Education Statistics,* 49,298,945 students were enrolled in public elementary and secondary schools in fall 2006. *See http://nces.ed.gov/programs/digest/d08/tables/dt08_033.asp.*

[27] *See http://nces.ed.gov/programs/digest/d08/tables/dt08_034.asp.* To determine the number of students in tested grades, we used the total number of public school students enrolled in grades 3 through 8, as well as grade 10, in fall of 2006.

make improvements in what they are doing, and inform the ESEA reauthorization process.

A second major benefit is that better public information on State and local progress in the four reform areas will likely spur more rapid progress on those reforms, because States and LEAs that appear to be lagging in one or more areas may see a need to redouble their efforts. The Department believes that more rapid progress on the essential educational reforms will have major benefits nationally, and that these reforms have the potential to drive dramatic improvements in student outcomes.

For example, statewide longitudinal data systems are essential tools in advancing education reform. With these systems in place, States can use this data to evaluate the effectiveness of specific interventions, schools, principals, and teachers by tracking individual student achievement, high-school graduation, and postsecondary enrollment and credit. They can, for example, track the academic achievement of individual students over time, even if those students change schools within the State during the course of their education. By analyzing this information, decision-makers can determine if a student's ''achievement trajectory'' will result in his or her being college- or career-ready and can better target services based on the student's academic needs.[28]

The Department also believes that States' implementation of these requirements will lead to more widespread development and implementation of better teacher and principal evaluation systems. In particular, the availability of accurate, complete, and valid achievement data is essential to implementing better systems of teacher and principal evaluation. Value-added models, for example, can provide an objective estimate of the impact of teachers on student learning and achievement.[29] Further, they can be used by schools, LEAs, or States to reward excellence in teaching or school leadership, as a component of performance-based compensation systems, or to identify schools in need of improvement or teachers who may require additional training or professional development.[30]

A few commenters questioned the utility of the data to be collected. Specifically, one commenter noted that lack of context on teacher/principal evaluation systems will render that data minimally meaningful to the end user. Another commenter cautioned that inconsistencies between States limit the comparability of the data and effectively reduce the value of data collection efforts. A third commenter argued more generally that, while data-driven decision making constitutes a priority for the commenter's State, much of the data required would not contribute to improved educational outcomes for students and, in fact, would divert attention from developing the infrastructure and relationships necessary to improve education. The Department continues to believe, however, that the requirements will have additional benefits to the extent that they provide States with incentives to address inequities in the distribution of effective teachers, improve the quality of State assessments, and undergo intensive efforts to improve struggling schools. Numerous studies document the substantial impact of improved teaching on educational outcomes and the need to take action to turn around the lowest-performing schools, including high schools (and their feeder middle schools) that enroll a disproportionate number of the students who fail to complete a high-school education and receive a regular high-school diploma. The Department believes that more widespread adoption of these reforms would have a significant, positive impact on student achievement.

Although these benefits are not easily quantified, the Department believes they will exceed the projected costs.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to States under this program as a result of this regulatory action. Expenditures are classified as transfers to States.

TABLE—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Annual Monetized Transfers.	$11,500,425,885.
From Whom to Whom	Federal Government to States.

The Stabilization program provides approximately $48.6 billion in formula grants to States.[31] As previously noted, the Department is awarding Stabilization program funds in two phases. In the first phase, the Department awarded 67 percent of a State's Education Stabilization Fund allocation, unless the State demonstrated that additional funds were required to restore fiscal year 2009 State support for education, in which case the Department awarded the State up to 90 percent of that allocation. In addition, the Department awarded 100 percent of each State's Government Services Fund allocation in Phase I. The Department will award the remainder of a State's Education Stabilization Fund allocation in the second phase. Approximately $11.5 billion will be available in Phase II.

Paperwork Reduction Act of 1995

This notice contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Department has received emergency approval for the information collections described below under Information Collection Reference Number 200910–1810–003.

A description of the specific information collection requirements is provided in the following tables along with estimates of the annual recordkeeping burden for these requirements. Included in an estimate is the time for collecting and tracking data, maintaining records, calculations, and reporting. The first table presents the estimated indicators burden for SEAs, the second table presents the estimated indicators burden for LEAs, the third table presents the estimated indicators burden for IHEs, and the fourth table presents the estimated State plan burden for SEAs.

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[28] For example, *see http://dataqualitycampaign.org/files/publications-dqc_academic_growth-100908.pdf* and *http://www.dataqualitycampaign.org/files/Meetings-DQC_Quarterly_Issue_Brief_092506.pdf.*

[29] *See:* Braun, Henry I. *Using Student Progress To Evaluate Teachers: A Primer on Value-Added Models.* Educational Testing Service, Policy Information Center, 2005; Marsh, Julie A.; Pane, John F.; Hamilton, Laura S. *Making Sense of Data-Driven Decision Making in Education: Evidence from Recent RAND Research.* Santa Monica, CA: RAND Corporation, 2006; and Sanders, William L. ''Value-Added Assessment from Student Achievement Data: Opportunities and Hurdles.'' Journal of Personnel Evaluation in Education, Vol. 14, No. 4, p. 329–339, 2000.

[30] Center for Educator Compensation Reform: *http://cecr.ed.gov/.*

[31] A table listing the allocations to States under the Stabilization program is available at: *http://www.ed.gov/programs/statestabilization/funding.html.*

State Fiscal Stabilization Fund Indicators and Descriptors

I. Assurance Indicators and Descriptors Burden Hours/Cost for SEAS

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (a)(1)	Confirm, for the State, the number and percentage (including numerator and denominator) of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified consistent with section 9101(23) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).	52	1	52	$1,560
Indicator (a)(2)	Confirm whether the State's Teacher Equity Plan (as part of the State's Highly Qualified Teacher Plan) fully reflects the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers (as required in section 1111(b)(8)(C) of the ESEA).	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (a)(1)	Describe, for each local educational agency (LEA) in the State, the systems used to evaluate the performance of teachers and the use of results from those systems in decisions regarding teacher development, compensation, promotion, retention, and removal.	52	132.2	6,874	$206,220
Indicator (a)(3)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion.	52	7	362	$10,860
Indicator (a)(4)	Provide, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level.	52	4	208	$6,240
Indicator (a)(5)	Indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level are publicly reported for each school in the LEA.	52	2	104	$3,120

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (a)(2)	Describe, for each LEA in the State, the systems used to evaluate the performance of principals and the use of results from those systems in decisions regarding principal development, compensation, promotion, retention, and removal.	52	132.2	6874	$206,220
Indicator (a)(6)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of principals include student achievement outcomes or student growth data as an evaluation criterion.	52	7	362	$10,860
Indicator (a)(7)	Provide, for each LEA in the State whose principals receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of principals rated at each performance rating or level.	52	2	104	$3,120
Indicator (b)(1)	Indicate which of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act are included in the State's statewide longitudinal data system.	52	2	104	$3,120

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (b)(2)	Indicate whether the State provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.	52	.5	26	$780
Indicator (b)(3)	Indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments.	52	.5	26	$780
Indicator (c)(1)	Confirm the approval status, as determined by the Department, of the State's assessment system under section 1111(b)(3) of the ESEA with respect to reading/language arts, mathematics, and science assessments.	52	1	52	$1,560
Indicator (c)(2)	Confirm whether the State has developed and implemented valid and reliable alternate assessments for students with disabilities that are approved by the Department.	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(3)	Confirm whether the State's alternate assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards.	52	1	52	$1,560
Indicator (c)(4)	Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides students with disabilities to ensure their meaningful participation in State assessments.	52	1	52	$1,560
Indicator (c)(5)	Confirm the number and percentage (including numerator and denominator) of students with disabilities who are included in State reading/language arts and mathematics assessments.	52	.5	26	$780
Indicator (c)(6)	Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides limited English proficient students to ensure their meaningful participation in State assessments.	52	1	52	$1,560
Indicator (c)(7)	Confirm whether the State provides native language versions of State assessments for limited English proficient students that are approved by the Department.	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(8)	Confirm the number and percentage (including numerator and denominator) of limited English proficient students who are included in State reading/language arts and mathematics assessments.	52	.5	26	$780
Indicator (c)(9)	Confirm that the State's annual State Report Card (under section 1111(h)(1) of the ESEA) contains the most recent available State reading and mathematics National Assessment of Educational Progress (NAEP) results as required by 34 CFR 200.11(c).	52	1	52	$1,560
Indicator (c)(10)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), the number and percentage (including numerator and denominator) of students who graduate from high school using a four-year adjusted cohort graduation rate as required by 34 CFR 200.19(b)(1)(i).	52	8	416	$12,480

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(11)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage (including numerator and denominator) who enroll in an institution of Higher education (IHE) (as defined in section 101(a) of the Higher Education Act of 1965, as amended (HEA)) within 16 months of receiving a regular high school diploma.	52	4,593	238,820	$7,164,600

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(12)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.	52	40	2,080	$62,400

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (d)(1)	Provide, for the State, the average statewide school gain in the "all students" category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on the State assessments in reading/language arts and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress (as defined in this notice) on State assessments in reading/language arts in the last year.	52	8	416	$12,480
Indicator (d)(2)	Provide, for the State, the average statewide school gain in the "all students" category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on State assessments in mathematics and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress on State assessments in mathematics in the last year.	52	8	416	$12,480

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (d)(1)	Provide the definition of "persistently lowest-achieving schools" (consistent with the requirements for defining this term set forth in this notice) that the State uses to identify such schools.	52	1	52	$1,560
Indicator (d)(3)	Provide, for the State, the number and identity of the schools that are Title I schools in improvement, corrective action, or restructuring, that are identified as persistently lowest-achieving schools.	52	4	208	$6,240
Indicator (d)(4)	Provide, for the State, of the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring, the number and identity of those schools that have been turned around, restarted, closed, or transformed (as defined in this notice) in the last year.	52	4	208	$6,240
Indicator (d)(5)	Provide, for the State, the number and identity of the schools that are secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools.	52	8	416	$12,480

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (d)(6)	Provide, for the State, of the persistently lowest-achieving schools that are secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year.	52	8	416	$12,480
Indicator (d)(7)	Provide, for the State and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law.	52	.5	26	780
Indicator (d)(8)	Confirm, for the State and for each LEA in the State that operates charter schools, the number of charter schools currently operating.	52	.5	26	780
Indicator (d)(9)	Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year.	42	2	84	$2,520
Indicator (d)(10)	Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in mathematics in the last year.	42	2	84	$2,520

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (d)(11)	Provide, for the State and for each LEA in the State that operates charter schools, the number and identity of charter schools that have closed (including schools that were not reauthorized to operate) within each of the last five years.	42	2	84	$2,520
Indicator (d)(12)	Indicate, for each charter school that has closed (including a school that was not reauthorized to operate) within each of the last five years, whether the closure of the school was for financial, enrollment, academic, or other reasons.	42	2	84	$2,520

*Figures in this column may reflect rounding.

II. Assurance Indicators and Descriptors Burden Hours/Cost for LEAs

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (a)(1)	Describe, for each LEA in the State, the systems used to evaluate the performance of teachers and the use of results from those systems in decisions regarding teacher development, compensation, promotion retention, and removal.	15,000	2	23,656	$591,400
Indicator (a)(3)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion.	12,368	.1	850	$21,250
Indicator (a)(4)	Provide, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level.	11,908	23.7	282,180	$7,054,500
Indicator (a)(5)	Indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level are publicly reported for each school in the LEA.	11,908	.5	5,955	$148,875

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (a)(2)	Describe, for each LEA in the State, the systems used to evaluate the performance of principals and the use of results from those systems in decisions regarding principal development, compensation, promotion, retention, and removal.	15,000	2	23,656	$591,400
Indicator (a)(6)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of principals include student achievement outcomes or student growth data as an evaluation criterion.	12,368	.1	850	$21,250
Indicator (a)(7)	Provide, for each LEA in the State whose principals receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of principals rated at each performance rating or level.	11,908	1.25	14,852	$371,300
Indicator (c)(10)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), the number and percentage (including numerator and denominator) of students who graduate from high school using a four-year adjusted cohort graduation rate as required by 34 CFR 200.19(b)(1)(i).	976	40	39,040	$976,000

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(11)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage (including numerator and denominator) who enroll in an IHE (as defined in section 101(a) of the HEA) within 16 months of receiving a regular high school diploma.	15,000	8.3	124,600	$3,115,000
Indicator (d)(4)	Provide, for the State, of the persistently lowest-achieving Title I schools in improvement, corrective action, or restructuring, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.	1,173	2	2,346	$58,650
Indicator (d)(5)	Provide, for the State, the number and identity of the secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools.	1,173	2	2,346	$58,650

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (d)(6)	Provide, for the State, of the persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.	1,173	2	2,346	$58,650

*Figures in this column may reflect rounding.

III. Assurance Indicators and Descriptors Burden Hours/Cost for IHEs

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $25.00)
Indicator (c)(11)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage(including numerator and denominator) who enroll in an IHE (as defined in section 101(a) of the HEA) within 16 months of receiving a regular high school diploma.	4,352	28.63	124,600	$3,115,000

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $25.00)
Indicator (c)(12)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.	1,685	44.32	74,685	$1,867,125

IV. State Plan Burden for SEAs

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(a)(1)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, the State's current ability to fully collect the required data or other information at least annually	52	20	1,040	$31,200
II(a)(2)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, the State's ability to fully publicly report the required data or other information, at least annually through September 30, 2011	52	10	520	$15,600
II(a)(3)(i)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not currently able to fully collect, at least annually, the data or other information required by the indicator or descriptor, the State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to fully collect the data or information, as required	52	40	2,080	$62,400

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(a)(3)(ii)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not currently able to fully collect the data or information required by the indicator or descriptor, the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means	52	8	416	$12,480
II(a)(3)(iii)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not currently able to fully collect the data or information required by the indicator or descriptor, the amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds	52	20	1,040	$31,200

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(a)(4)(i)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not able to fully publicly report, at least annually through September 30, 2011, the data or other information required by the indicator or descriptor, the State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to fully publicly report the data or information, as required	52	20	1,040	$31,200
II(a)(4)(ii)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not able to fully publicly report, by September 30, 2009 and at least annually through September 30, 2011, the data or other information required by the indicator or descriptor, the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means	52	8	416	$12,480

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(a)(4)(iii)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not able to fully publicly report, by September 30, 2009 and at least annually through September 30, 2011, the data or other information required by the indicator or descriptor, the amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds	52	20	1,040	$31,200
II(b)	If the State is currently able to fully collect and publicly report the data or information required by the indicator, the State must provide the most recent data or information with its plan and publicly report that plan	52	20	1,040	$31,200
II(c)(1)(i)	[With respect to Indicator (b)(1)] Indicate which of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act are currently included in the State's statewide longitudinal data system	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(c)(1)(ii)(A)	[With respect to Indicator (b)(1)] If the State's statewide longitudinal data system does not currently include all 12 elements, describe, as required, the State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, a statewide longitudinal data system that includes all 12 elements	52	80	4,160	$124,800
II(c)(1)(ii)(B)	[With respect to Indicator (b)(1)] If the State's statewide longitudinal data system does not currently include all 12 elements, describe the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing such a system	52	2	104	$3,120
II(c)(1)(ii)(c)	[With respect to Indicator (b)(1)] If the State's statewide longitudinal data system does not currently include all 12 elements, describe the amount of funds the State is using or will use to develop and implement such a system, and whether the funds are or will be Federal, State, or local funds	52	20	1,040	$31,200
II(c)(2)(i)	[With respect to Indicator (b)(2)] Indicate whether the State provides teachers with student growth data consistent with the indicator	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(c)(2)(ii)(A)	[With respect to Indicator (b)(2)] If the State does not provide teachers with such data, describe, as required, the State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to provide teachers with such data	37	80	2,960	$88,800
II(c)(2)(ii)(B)	[With respect to Indicator (b)(2)] If the State does not provide teachers with such data, describe the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing the means to provide the data	37	8	296	$8,880
II(c)(2)(ii)(C)	[With respect to Indicator (b)(2)] If the State does not provide teachers with such data, describe the amount of funds the State is using or will use to develop and implement the means to provide the data, and whether the funds are or will be Federal, State, or local funds	37	20	740	$22,200

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(c)(3)(i)	[With respect to Indicator (b)(3)] Indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments	52	1	52	$1,560
II(c)(3)(ii)(A)	[With respect to Indicator (b)(3)] If the State does not provide teachers with such data, describe, as required, the State's process and timeline for developing and implementing the means to provide teachers with such data	52	100	5,200	$156,000
II(c)(3)(ii)(B)	[With respect to Indicator (b)(3)] If the State does not provide teachers with such data, describe the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing the means to provide the data	52	8	416	$12,400
II(c)(3)(ii)(C)	[With respect to Indicator (b)(3)] If the State does not provide teachers with such data, describe the amount of funds the State is using or will use to develop and implement the means to provide the data, and whether the funds are or will be Federal, State, or local funds	52	20	1,040	$31,200

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(e)(1)	Describe the agency or agencies in the State responsible for the development, execution, and oversight of the plan, including the institutional infrastructure and capacity of the agency or agencies as they relate to each of those tasks	52	10	520	$15,600
II(e)(2)	Describe the agency or agencies, institutions, or organizations, if any, providing technical assistance or other support in the development, execution, and oversight of the plan, and the nature of such technical assistance or other support	52	10	520	$15,600
II(e)(3)	Describe the overall budget for the development, execution, and oversight of the plan	52	40	2,080	$62,400
II(e)(4)	Describe the processes the State employs to review and verify the required data and information	52	10	520	$15,600
II(e)(5)	Describe the processes the State employs to ensure that, consistent with 34 CFR 99.31(b), the required data and other information are not made publicly available in a manner that personally identifies students, where applicable	52	10	520	$15,600

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Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this regulatory action will affect are small LEAs receiving funds under this program and small IHEs.

This regulatory action will not have a significant economic impact on small LEAs because they will be able to meet

the costs of compliance with this regulatory action using the funds provided under this program.

With respect to small IHEs, the U.S. Small Business Administration Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Based on data from the Department's Integrated Postsecondary Education Data System (IPEDS), up to 532 small IHEs with revenues of less than $5 million may be affected by this requirement; only 100 of these IHEs are public. These small IHEs represent only 15 percent of degree-granting IHEs. In addition, only 161,155 students (0.7 percent) enrolled in degree-granting IHEs in fall 2007 attended these small institutions; just 60,391 of these students are enrolled in small, degree-granting public IHEs. As the burden for indicators (c)(11) and (c)(12) is driven by the number of students for whom IHEs would be required to submit data, small IHEs will require significantly less effort to adhere to these requirements than will be the case for larger IHEs. Based on IPEDS data, the Department estimates that 24,517 of these students are first-time freshmen. As stated earlier in the Summary of Costs and Benefits section of this notice, the Department estimates that, as required by indicator (c)(11), IHEs will be able to confirm the enrollment of 20 first-time freshmen per hour. Applying this estimate to the estimated number of first-time freshmen at small IHEs, the Department estimates that these IHEs will need to spend 1,226 hours to respond to this requirement at a total cost of $30,650 (assuming a cost of $25 per hour).

The effort involved in reporting the number of students enrolling in a public IHE in their home State who complete at least one year's worth of college credit applicable toward a degree within two years as required by indicator (c)(12) will also apply to small IHEs, but will be limited to students who enroll in public IHEs in their home State. As discussed earlier in the Summary of Costs and Benefits section of this notice, the Department estimates that 81 percent of first-time freshmen who graduate from public high schools enroll in IHEs in their home State. Applying this percentage to the estimated number of first-time freshmen enrolled in small public IHEs (9,187), the Department estimates that small IHEs will be required to report credit completion data for a total of 7,442 students. For this requirement, the Department also estimates that IHEs will be able to report the credit completion status of 20 first-time freshmen per hour. Again, applying this data entry rate to the estimated number of first-time freshmen at small public IHEs in their home State, the Department estimates that these IHEs will need to spend 372 hours to respond to this requirement at a total cost of $9,300. The total cost of these requirements for small IHEs is, therefore, $39,950; $19,310 of this cost will be borne by small private IHEs, and $20,640 of the cost will be borne by small public IHEs. Based on the total number of small IHEs across the Nation, the estimated cost per small private IHE is $45, and the estimated cost per small public IHE is $206. The Department has, therefore, determined that the requirements will not represent a significant burden on small not-for-profit IHEs. It is also important to note that States may use their Government Services Fund allocations to help small IHEs meet the costs of complying with the requirements that affect them, and public IHEs may use Education Stabilization Fund dollars they receive for that purpose.

In addition, the Department believes the benefits provided under this regulatory action will outweigh the burdens on these institutions of complying with the requirements. One of these benefits will be the provision of better information on student success in postsecondary education to policymakers, educators, parents, and other stakeholders. The Department believes that the information gathered and reported as a result of these requirements will improve public accountability for performance; help States, LEAs, and schools learn from one another and improve their decision-making; and inform Federal policymaking.

A second major benefit is that better public information on State and local progress in the four reform areas will likely spur more rapid progress on those reforms, because States and LEAs that appear to be lagging in one area or another may see a need to redouble their efforts. The Department believes that more rapid progress on the essential educational reforms will have major benefits nationally, and that these reforms have the potential to drive dramatic improvements in student outcomes. The requirements that apply to IHEs should, in particular, spur more rapid implementation of pre-K–16 State longitudinal data systems.

Assessment of Educational Impact

In the NPR and in accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, we requested comment on whether these requirements do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPR and on our review, we have determined that these final requirements do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 6, 2009.

Arne Duncan,

Secretary of Education.

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