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DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810-AB31

[Docket ID ED-2016-OESE-0047]

Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act--Innovative Assessment Demonstration Authority

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes new regulations under title I, part B of the Elementary and Secondary Education Act of 1965 (ESEA) to implement changes made to the ESEA by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015, including the ability of the Secretary to provide demonstration authority to a State educational agency (SEA) to pilot an innovative assessment and use it for accountability and reporting purposes under title I, part A of the ESEA before scaling such an assessment statewide.

DATES: We must receive your comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “How to use [Regulations.gov](http://Regulations.gov).”

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about these proposed regulations, address them to Jessica McKinney, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W107, Washington, DC 20202-2800.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments

only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jessica McKinney, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W107, Washington, DC 20202-2800. Telephone: (202) 401-1960 or by email: Jessica.McKinney@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary:

Purpose of This Regulatory Action: On December 10, 2015, President Barack Obama signed the ESSA into law. The ESSA reauthorizes the ESEA, which provides Federal funds to improve elementary and secondary education in the Nation's public schools. Through the reauthorization, the ESSA made significant changes to the ESEA for the first time since the ESEA was reauthorized through the No Child Left Behind Act of 2001 (NCLB), including significant changes to title I. In particular, the ESSA includes in title I, part B of the ESEA a new demonstration authority under which an SEA or consortium of SEAs that meets certain application requirements may establish, operate, and evaluate an innovative assessment, including for use in the State accountability system, with the goal of using the innovative assessment after the demonstration authority ends to meet the academic assessment and statewide accountability system requirements under title I, part A of the ESEA. An SEA would require this demonstration authority under title I, part B, if the SEA is proposing to implement an innovative assessment initially in only a subset of its LEAs without also continuing administration of its current statewide assessment to all students in those LEAs for school accountability and reporting purposes. We propose these regulations to provide clarity to SEAs regarding the requirements for applying for and implementing innovative assessment demonstration authority. These regulations will also help to ensure that SEAs provided this authority can develop and administer high-quality, valid, and reliable assessments that measure student mastery of challenging State academic standards, improve the design and delivery of large-scale assessments, and better inform classroom instruction, ultimately leading to improved academic outcomes for all students.

Summary of the Major Provisions of This Regulatory Action: The proposed regulations would support implementation of provisions in section 1204 of title I, part B of the ESEA, as amended by the ESSA, that permit the Secretary to provide innovative assessment demonstration authority to an SEA or consortium of SEAs, including by:

- Establishing requirements for applications for the demonstration authority and selection criteria for evaluating those applications through a peer-review process;
- Establishing requirements for the transition, at the conclusion of an SEA's or consortium's demonstration authority period, to statewide use of the innovative assessment for the purposes of academic assessments and the statewide accountability system under section 1111; and
- Establishing parameters for withdrawing an SEA's or consortium's demonstration authority if the SEA or consortium does not meet certain requirements.

Please refer to the Significant Proposed Regulations section of this preamble for a detailed discussion of the major provisions contained in the proposed regulations.

Costs and Benefits: We believe that the benefits of this regulatory action outweigh any associated costs to a participating SEA, which may be supported with Federal grant funds. These benefits include the administration of assessments that may measure student mastery of State academic content standards more effectively than current State assessments and better inform classroom instruction and student supports, ultimately leading to improved academic outcomes for all students. Please refer to the Regulatory Impact Analysis section of this document for a more detailed discussion of costs and benefits.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 3W107, 400 Maryland Ave., SW., Washington, DC, between 9:00 a.m. and 4:30 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Particular Issue for Comment: We request comments from the public on any issues related to these proposed regulations. However, we particularly request the public to comment on, and provide additional information regarding, the following issue. Please provide a detailed rationale for any response you make.

- Whether the suggested options to support SEAs or consortia of SEAs in evaluating their innovative assessment system will be effective and appropriate for determining that the innovative assessment generates results that are comparable for all students and for each subgroup of students as compared to the results for such students on the State assessments; whether any additional options should be considered; and which options, if any, should not be included or should be modified. (See proposed §200.77.)

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Background

On December 10, 2015, President Barack Obama signed the ESSA into law. The ESSA reauthorizes the ESEA, which provides Federal funds to improve elementary and secondary education in the Nation's public schools. Through the reauthorization, the ESSA made significant changes to the ESEA, including in title I, part B, permitting a new innovative assessment demonstration authority. This authority is aligned with the principles of President Obama's testing action plan, which seeks to ensure that assessments are high-quality, worth taking, and time-limited.<sup>1</sup> Under this authority, an SEA or consortium of SEAs that meets certain application requirements may establish, operate, and evaluate an innovative assessment system, and use the innovative assessment system for purposes of school accountability and reporting in its local educational agencies (LEAs), or a subset of its LEAs or schools, instead of the applicable statewide assessment. SEAs already have flexibility to innovate their statewide assessment systems under title I, part A without using this demonstration authority--for example, by adopting computer-adaptive testing, breaking up a single summative assessment into interim or modular assessments, or adopting innovative item types. An SEA requires this authority under title I, part B only if the SEA is proposing to implement an innovative assessment initially in a subset of its LEAs without also continuing administration of its current statewide assessment to all students in those LEAs for school accountability and reporting purposes.

An SEA may propose an innovative assessment system that includes academic content assessments in all of the required grades and subjects under section 1111(b)(2)(B) of the ESEA, as amended by the ESSA, or a system that includes a subset of those grades or subjects. For example, an SEA could administer an innovative assessment only in high school mathematics and reading/language arts, in science within each grade span, or in mathematics in grades 3-5, so long as the SEA maintained its statewide assessments in any required grade or subject in which an innovative assessment would not be administered. An SEA or consortium may implement the demonstration authority for up to five years (and may request to extend this authority for an additional two years if needed), with the goal of using the innovative assessment statewide after the demonstration authority period to meet the academic assessment and accountability requirements under title I, part A of the ESEA. We propose these regulations to provide clarity to SEAs regarding the requirements for applying for and implementing the innovative assessment demonstration authority. The proposed regulations are further described under the Significant Proposed Regulations section of this NPRM.

### Public Participation

On December 22, 2015, the Department published a request for information in the Federal Register soliciting advice and recommendations from the public on the implementation of title I of the ESEA, as amended by the ESSA. We received 369 comments. We also held two public meetings with stakeholders--one on January 11, 2016, in Washington, D.C., and one on January 19, 2016, in Los Angeles, California--at which we heard from over 100 speakers regarding the development of regulations, guidance, and technical assistance. In addition, Department staff have held more than 200 meetings with education stakeholders and leaders across the country to hear about areas of interest and concern regarding implementation of the new law.

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<sup>1</sup> U.S. Department of Education (2015). Fact Sheet: Testing Action Plan [Press release]. Retrieved from <http://www.ed.gov/news/press-releases/fact-sheet-testing-action-plan>.

## Significant Proposed Regulations

The Secretary proposes new regulations in 34 CFR part 200 to implement the innovative assessment demonstration authority under section 1204 of title I, part B of the ESEA, as amended by the ESSA. We discuss substantive issues under the sections of the proposed regulations to which they pertain.

### Section 200.76 Innovative assessment demonstration authority

**Statute:** Under section 1204 of the ESEA, as amended by the ESSA, the Secretary may provide an SEA or consortium of SEAs with authority to establish an innovative assessment system (referred to as “demonstration authority”) if the SEA or consortium meets certain application requirements. Section 1204(f) requires the Secretary to implement a peer review process to inform the awarding of demonstration authority. Section 1204(b) specifies that the Secretary may provide demonstration authority for a period not to exceed five years and that, during the first three years in which the Secretary provides demonstration authority (referred to as the “initial demonstration period”), no more than seven SEAs may participate (including those participating in a consortium), and a consortium may include no more than four SEAs.

Section 1204(a) provides examples of the types of assessments that may be part of an innovative assessment system including: (1) competency-based assessments, instructionally embedded assessments, interim assessments, cumulative year-end assessments, or performance-based assessments that combine into an annual summative determination for a student, which may be administered through computer-adaptive assessments; and (2) assessments that validate when students are ready to demonstrate mastery or proficiency and allow for differentiated student support based on individual learning needs.

**Current Regulations:** None.

**Proposed Regulations:** Proposed §200.76 would establish general requirements that SEAs and consortia of SEAs must meet when applying for, and implementing, the innovative assessment demonstration authority in the ESEA, as amended by the ESSA, including definitions and a requirement that applications from SEAs and consortia of SEAs be peer reviewed based on the proposed requirements and selection criteria established in subsequent sections of the proposed regulations. Proposed §200.76(b) would define key terms used in subsequent sections of the proposed regulations, including “demonstration authority period” and “innovative assessment system.” Proposed §200.76(c) would clarify the process by which the Secretary may assign values to each proposed selection criterion and factors under a criterion, and proposed §200.76(d) would clarify limitations on participation during the initial demonstration period, including clarifications related to consortia of SEAs that have affiliate members not yet implementing the innovative assessment system.

**Reasons:** Title I, part B of the ESEA, as amended by the ESSA, includes a new innovative assessment demonstration authority under which an SEA or consortium of SEAs may apply to the Secretary to establish, operate, and evaluate an innovative assessment system, and use such an assessment instead of, or in addition to, its statewide assessments for purposes of school accountability and reporting. An SEA may initially administer its innovative assessment in a subset of schools or LEAs. However, the goal of the demonstration authority period is to

provide an SEA with the time to implement, improve, and evaluate the technical quality of its innovative assessment to determine whether it should be continued, taken to scale, and administered statewide, and whether it can be used to meet the statewide academic assessment and accountability requirements under title I, part A of the ESEA, as amended by the ESSA, at the end of the demonstration authority period. The demonstration authority period is capped at five years, although an SEA may request an extension of no more than two years if it needs additional time to scale its system to operate statewide and receive approval to use its system for purposes of title I, part A of the ESEA.

We believe the proposed regulations are critical to provide clarity for SEAs interested in applying for the demonstration authority. First, proposed §200.76 would help SEAs understand the purpose and goal of the demonstration authority by defining key terms and timelines. By defining the “demonstration authority period” for an individual SEA or consortium of SEAs, the proposed regulations would clarify that the SEA must be ready to implement an operational innovative assessment in at least some LEAs at the time of its application and that the period cannot be used solely for planning. The SEA must also be ready to use such an assessment for purposes of accountability and reporting student achievement during each year of its demonstration authority period.

We recognize that many SEAs will need time to plan, develop or procure, pilot, and field test components of an innovative assessment prior to operation. An SEA does not need demonstration authority to plan for or develop an innovative assessment, or to administer such an assessment in schools or LEAs alongside current statewide assessments, or in place of required LEA assessments. Only SEAs that are ready to administer an innovative assessment, in at least some schools or LEAs, in place of the statewide assessment require authority. For these reasons, we intend to work with external partners and organizations to assist interested SEAs in planning for innovative assessment demonstration authority and understanding the application process and purpose and opportunity for innovation within the authority. Specifically, the Department intends to offer SEAs that are not yet ready to implement an innovative assessment under the demonstration authority, including SEAs that are affiliate members of consortia, the opportunity to receive technical assistance focused on innovative assessments, such as by participating in a community of practice. SEAs will have an opportunity to receive support and learn from experts in assessment and accountability system design as they plan their systems. These innovative assessment technical assistance opportunities would create a space for SEAs to engage in thoughtful planning of their innovative assessment system, as well as share ideas and receive useful feedback--ultimately increasing the strength of future proposals and creating a cohort of additional SEAs that may be ready to implement the demonstration authority.

We also note that, under part A of title I of the ESEA, as amended by the ESSA, States have the flexibility to use computer-adaptive statewide assessments, to administer a single summative statewide assessment, or to offer multiple statewide interim assessments during the course of the academic year that result in a single summative score and provides valid, reliable, and transparent information on student achievement (e.g., modular assessments). A State may administer and submit any of these assessments for Federal peer review of State assessment systems without seeking demonstration authority, because they are permitted under section 1111(b)(2) and are given statewide, rather than in a subset of LEAs initially. In other words, an SEA could use a peer-reviewed innovative assessment statewide without this authority.

Similarly, an SEA could test an innovative assessment in some LEAs without this authority, so long as it continued to use the existing statewide assessment for accountability purposes in those LEAs. However, if an SEA desires to begin to use an innovative assessment system for accountability purposes under title I in a select handful of LEAs, while using the statewide assessment for those purposes in other LEAs--that is, if they wish to maintain two separate assessment systems for accountability for some temporary period of time--then demonstration authority is required.

Because the statute lists types of assessments, such as performance-based and interim assessments, that an SEA may use in its innovative assessment system, proposed §200.76 would also define “innovative assessment system” to provide greater clarity that any innovative assessment design may be used under the demonstration authority, so long as it meets applicable requirements and produces an annual summative determination for each student of grade-level achievement aligned to the State’s challenging academic standards under section 1111(b)(1), or, when a student is assessed with an alternate assessment aligned with alternate academic achievement standards, an annual summative determination for the student relative to such alternate academic achievement standards. This would promote flexibility and innovation in assessment design, while ensuring that students in schools participating in the authority would be held to the same high standards as other students in the State and that parents and educators receive the same vital information about student progress toward meeting those standards each year.

Finally, proposed §200.76 would clarify the process for applying to the Secretary for the demonstration authority, including the statutory requirement that applications from an SEA or a consortium of SEAs be peer reviewed to inform the Secretary’s decision to award an SEA with the authority. The proposed regulations would provide greater clarity by specifying that each applicant must address all of the requirements and selection criteria, described in proposed §§200.77 and 200.78, in its application. In particular, the peer review process would be designed to help the Secretary determine whether an applicant will be able to successfully meet the requirements of the demonstration authority based on the extent to which the applicant’s plan sufficiently addresses the selection criteria. Such peer review panels would include experts in the design, development, and implementation of innovative assessment systems (including psychometricians, measurement experts, and researchers) and State and local practitioners with experience implementing such systems (such as State and local assessment directors and educators). Further, proposed §200.76 would specify the process by which the Secretary informs applicants of the value assigned to each selection criterion or factor under a criterion. The proposed regulations do not assign values for particular selection criterion at this time, but, rather, help inform interested SEAs that these criteria will each be scored during the peer review process in a similar manner to how the Department uses selection criteria in other programs, as specified under 34 CFR 75.201. Taken together, these proposed regulations would help ensure that SEAs understand the expectations and terms of the demonstration authority and increase the likelihood that SEAs will submit applications that meet the requirements and fully address the selection criteria.

#### Sections 200.77 and 200.78 Demonstration authority application requirements and selection criteria

Statute: Section 1204(e) of the ESEA, as amended by the ESSA, requires an SEA or consortium

of SEAs seeking demonstration authority to submit an application to the Secretary. Specifically, section 1204(e) requires that an application include a description of the experience of the applicant in implementing any components of its innovative assessment system, the timeline over which it proposes to exercise demonstration authority, and a demonstration that the innovative assessment system will--

(1) Be developed in collaboration with stakeholders representing the interests of children with disabilities, English learners, and other historically underserved children; teachers, principals, and other school leaders; LEAs; parents; and civil rights organizations in the State;

(2) Meet all requirements of section 1111(b)(2)(B), excluding requirements that the assessments be the same assessments administered to all public school students in the State (if the system will be initially administered in a subset of LEAs) and be administered annually in grades 3-8 and at least once in grades 9-12 in reading/language arts and mathematics and at least once in each of grades 3-5, 6-9, and 10-12 in science;

(3) Be aligned to the challenging State academic content standards under section 1111(b)(1) and address the depth and breadth of those standards;

(4) Express student results or student competencies in terms consistent with the State's aligned academic achievement standards under section 1111(b)(1);

(5) Generate results that are valid, reliable, and comparable for all students and for each subgroup of students in section 1111(b)(2)(B)(xi) as compared to the results for such students on the statewide academic assessments under section 1111(b)(2);

(6) Be accessible to all students, such as by incorporating the principles of universal design for learning;

(7) Provide teachers, principals, other school leaders, students, and parents with timely data, disaggregated by each subgroup of students described in section 1111(b)(2)(B)(xi), to inform and improve instructional practice and student supports;

(8) Identify which students are not making progress toward meeting the challenging State academic standards so that teachers can provide instructional support and targeted interventions to all students;

(9) Annually measure the progress of not less than the same percentage of students overall and in each of the subgroups of students in section 1111(c)(2), as measured under section 1111(c)(4)(E), as were assessed under the statewide academic assessments required by section 1111(b)(2);

(10) Generate an annual, summative achievement determination, based on the aligned State academic achievement standards under section 1111(b)(1) and based on annual data, for each individual student; and

(11) Allow the SEA to validly and reliably aggregate data from the innovative assessment system for purposes of accountability, consistent with the requirements of section 1111(c), and reporting, consistent with the requirements of section 1111(h).



In addition, section 1204(e) requires an application that includes a description of how an SEA will--

- (1) Continue use of the statewide academic assessments required under section 1111(b)(2) if those assessments will be used for accountability purposes for the duration of the demonstration authority period;
- (2) Ensure that students with the most significant cognitive disabilities may be assessed with alternate assessments consistent with section 1111(b)(2)(D);
- (3) Inform parents of students in participating LEAs about the innovative assessment system at the beginning of each school year in which the system will be implemented;
- (4) Report data from the system annually to the Secretary;
- (5) Identify the distinct purposes for each assessment that is part of the system;
- (6) Provide support and training to LEA and school staff to implement the system;
- (7) Engage and support teachers in developing and scoring assessments that are part of the system, including through the use of high-quality professional development, standardized and calibrated scoring rubrics, and other strategies, consistent with relevant nationally recognized professional and technical standards, to ensure inter-rater reliability and comparability;
- (8) Acclimate students to the system;
- (9) If the SEA is proposing to administer the system initially in a subset of LEAs, scale the system to administer the system statewide or in additional LEAs;
- (10) Gather data, solicit regular feedback from teachers, principals, other school leaders, and parents, and assess the results of each year of the demonstration authority, and respond by making needed changes;
- (11) Ensure that all students and each of the subgroups of students in section 1111(c)(2) participating in the system receive the instructional support needed to meet the State's aligned academic achievement standards;
- (12) Ensure that each LEA has the technological infrastructure to implement the system;  
and
- (13) Hold all schools in participating LEAs accountable for meeting the State's expectations for student achievement.

Finally, section 1204(e) requires an application from an SEA seeking to administer an innovative assessment system initially in a subset of LEAs to include--

- (1) A description of the LEAs that will participate, including what criteria the SEA has for approving any additional LEAs to participate during the demonstration authority period;
- (2) Assurances from participating LEAs that they will comply with the requirements of section 1204(e);

(3) A description of how the SEA will ensure that the inclusion of additional LEAs contributes to progress toward achieving high-quality and consistent implementation across demographically diverse LEAs during the demonstration authority period and that the participating LEAs, as a group, will be demographically similar to the State as a whole by the end of the demonstration authority period; and

(4) A description of the SEA's plan to hold all students and each subgroup of students in section 1111(c)(2) to the same high standard as other students in the State.

Section 1204(f) requires the Secretary to implement a peer review process to inform the awarding of demonstration authority to applicants and determinations of whether an applicant's innovative assessment system meets requirements in addition to those listed in section 1204(e).

Specifically, the peer review must help inform the Secretary's determination as to whether the system--

(1) Is comparable to the State academic assessments under section 1111(b)(2);

(2) Is valid, reliable, of high technical quality, and consistent with relevant, nationally recognized professional and technical standards; and

(3) Provides an unbiased, rational, and consistent determination of progress toward the long-term goals described under section 1111(c)(4)(A)(i) for the academic achievement of all students based on academic assessments.

Section 1204(l) specifies that each State member of a consortium seeking demonstration authority must meet all applicable requirements. Section 1204(c) and 1204(m) describes the role of the Institute for Education Sciences in producing a progress report on implementation of the authority during the initial demonstration period, as well as disseminating regular information and best practices to the field on innovative assessments after the initial demonstration period concludes.

Current Regulations: None.

Proposed Regulations: Proposed §200.77 would clarify the requirements that an SEA or consortium of SEAs must meet in its application in order to be approved to implement the demonstration authority. The SEA or consortium would be required to submit to the Secretary an application that addresses three areas: consultation, as described in proposed §200.77(a); innovative assessment systems, as described in proposed §200.77(b); selection criteria, as described in proposed §200.78; and assurances, as described in proposed §200.77(d). In addition, proposed §200.77(e) would clarify certain application requirements that apply to an SEA or consortium seeking to implement demonstration authority initially in a subset of schools or LEAs, and proposed §200.77(f) would clarify application requirements that apply specifically to a consortium.

#### Consultation

Proposed §200.77(a) would require an SEA or consortium to provide evidence that it developed the innovative assessment system in collaboration with partners, including (1) experts

in the planning, development, implementation, and evaluation of innovative assessments and (2) affected stakeholders, including those representing the interests of children with disabilities, English learners, and other subgroups of students under section 1111(c)(2) of the ESEA; teachers, principals, and other school leaders; LEAs; students and parents; and civil rights organizations.

#### Innovative assessment system requirements

Proposed §200.77(b) would clarify requirements for an innovative assessment system by requiring a demonstration from each SEA or consortium describing how its system does or will:

- Meet all requirements under section 1111(b)(2)(B), with two exceptions. First, innovative assessments would not need to be the same assessments administered to all public school students in the State during the demonstration authority period, if the innovative assessment will be administered initially in a subset of schools or LEAs, provided that non-participating schools continue to administer the statewide academic assessments under section 1111(b)(2). Second, innovative assessments would not need to be administered annually in grades 3-8 and at least once in grades 9-12 (in the case of reading/language arts and mathematics assessments) and at least once in grades 3-5, 6-9, and 10-12 (in the case of science assessments), so long as the statewide academic assessments under section 1111(b)(2) are administered in each required grade and subject in which the SEA does not implement an innovative assessment.
- Align with the State academic content standards under section 1111(b)(1), including their full depth and breadth.
- Express individual student results or competencies in terms consistent with the State academic achievement standards under section 1111(b)(1), and identify which students are not making sufficient progress toward, and attaining, grade-level proficiency on such standards.
- Provide for comparability to the State academic assessments under section 1111(b)(2) and generate results that are valid, reliable, and comparable for all students and for each subgroup of students under section 1111(b)(2)(B)(xi), as compared to the results for such students on the State assessments. Consistent with the selection criterion for evaluation and continuous improvement described in proposed §200.78(e), an SEA would be required to submit a plan to annually determine comparability to the State assessments using one of several specified methods, which include assessing all students using an existing State assessment at least once in each grade span for which there is an innovative assessment; assessing a representative sample of students in the same school year on both the innovative and corresponding State assessment; incorporating common items on both innovative and statewide assessments; or an alternative method that an SEA can demonstrate will provide for an equally rigorous and statistically valid comparison between student performance on the innovative assessment and the existing statewide assessment, including for each subgroup of students under section 1111(b)(2)(B)(xi).
- Provide for the participation of, and be accessible for, all students, including children with disabilities and English learners, and provide appropriate accommodations consistent with section 1111(b)(2). An SEA may also incorporate the principles of universal design for learning in developing its innovative assessments.
- For purposes of the accountability system under section 1111(c)(4)(E), annually measure

the progress on the Academic Achievement indicator of at least 95 percent of all students, and 95 percent of students in each subgroup of students under section 1111(c)(2) who are required to take such assessments in participating schools.

- Generate an annual summative determination for each student in a school participating in the innovative assessment system describing the student's grade-level mastery of the State's challenging academic standards under section 1111(b)(1), or, in the case of a student assessed with an alternate assessment aligned with alternate academic achievement standards, an annual summative determination for the student relative to such alternate academic achievement standards.

- Provide disaggregated results by each subgroup of students under section 1111(b)(2)(B)(xi), including timely data for teachers, principals and other school leaders, students, and parents consistent with the statutory requirements for the statewide assessment system and reporting data on State and LEA report cards and provided in an accessible manner to parents.

- Provide an unbiased, rational, and consistent determination of progress toward the State's long-term goals under section 1111(c)(4)(A), for all students and each subgroup of students under section 1111(c)(2), and a comparable measure of student performance on the Academic Achievement indicator under section 1111(c)(4)(B)(i) for participating schools relative to non-participating schools so that the SEA may validly and reliably aggregate data from the system for purposes of meeting the statutory requirements for the statewide accountability system (including how the SEA identifies participating and non-participating schools in a consistent manner for comprehensive and targeted support and improvement, consistent with section 1111(c)) and reporting on State and LEA report cards.

#### Selection criteria

Proposed §200.77(c) would require each SEA or consortium to submit an application that addresses each of the selection criteria, described further in proposed §200.78.

#### Assurances

Proposed §200.77(d) would require an SEA, or each SEA in the consortium, to provide the following assurances:

- The SEA will continue use of the statewide academic assessments during the demonstration authority period in any school that is not participating in the demonstration authority, as well as in each participating school if the statewide assessments will be used in addition to the innovative assessments for accountability purposes under section 1111(c) during grades or grade spans when the innovative assessments are not offered, or for purposes of evaluation of the innovative assessments consistent with proposed §200.78(e).

- The SEA will ensure that all students and each subgroup of students under section 1111(c)(2) in participating schools and LEAs are held to the same challenging academic standards as all other students, except that students with the most significant cognitive disabilities may be assessed with an alternate assessment aligned to alternate academic achievement standards consistent with section 1111(b)(2)(D), and that all students and subgroups

of students will receive the instructional support needed to meet those standards.

- The SEA will annually report information pertaining to implementation of the innovative assessment system to the Secretary, including: (1) an update on implementation, including the SEA’s progress against its timeline under proposed §200.78(c), any outcomes or results from its ongoing evaluation and continuous improvement under proposed §200.78(e), and, if the innovative assessment system is not yet used statewide, the SEA’s progress in scaling up the system to additional LEAs or schools consistent with its strategies under proposed §200.78(a)(4); (2) the performance of participating students, at the State, LEA, and school level, for all students and disaggregated by each subgroup of students under section 1111(c)(2) on the innovative assessment in a manner that does not reveal personally identifiable information; (3) if the innovative assessment system is not yet implemented statewide, school demographic and student achievement information (including by each subgroup of students under section 1111(c)(2)) for participating schools and LEAs and for any schools or LEAs that will participate for the first time in the following year, as well as a description of how the participation of additional schools or LEAs in that year contributes to progress toward achieving high-quality and consistent implementation across demographically diverse LEAs in the State consistent with the SEA’s plan and benchmarks under proposed §200.78(a)(4)(iii); and (4) feedback from teachers, principals, other school leaders, parents, and other stakeholders consulted under proposed §200.77(a)(2)(i)-(v) about their satisfaction with the innovative assessment system.

- The SEA will ensure that each LEA provides parents of students enrolled in participating schools with specific information about the innovative assessment system consistent with section 1112(e)(2)(B) at the beginning of each school year during which the innovative assessment system will be implemented, in an understandable and uniform format and, to the extent practicable, a language that parents can understand.

- The SEA will ensure that it will coordinate with and provide information to, as applicable, the Institute of Education Sciences for purposes of the progress report described in section 1204(c) and ongoing dissemination of information under section 1204(m).

#### Initial implementation in a subset of LEAs or schools

If an SEA or consortium seeks to implement an innovative assessment system initially in a subset of its LEAs or schools, rather than statewide, proposed §200.77(e) would require the SEA or consortium to provide: (1) a description of each LEA, and its participating schools, that will initially participate, including demographic information and its most recent LEA report card under section 1111(h)(2); and (2) an assurance from each LEA that it will comply with all applicable requirements.

#### Applications from a consortium

Finally, proposed §200.77(f) would require a consortium to describe its governance structure, including:

- The role of each SEA member (including financial responsibilities), which may include a description of “affiliate members” that are involved in the consortium’s work but are not seeking demonstration authority to implement the innovative assessment system;

- How the member SEAs will manage and, at their discretion, share intellectual property developed by the consortium as a group; and
- How the member SEAs will consider requests from other SEAs to join or leave the consortium and ensure that changes in membership do not affect the consortium's ability to implement the demonstration authority.

Reasons: Proposed §200.77 would clarify and organize each statutory requirement that an SEA or consortium of SEAs seeking the demonstration authority must meet in its application to the Secretary. Determinations of whether an SEA or consortium meets the requirements would be informed by the peer review process under proposed §200.76. Proposed §200.77 would group similar requirements together into the categories below to facilitate application preparation and organization of work.

### Consultation

Given the statutory requirement in section 1204(e)(2)(A)(v) of the ESEA, as amended by the ESSA, that innovative assessments be developed in collaboration with certain partners, proposed §200.77(a) would clarify that consultation with stakeholders must occur prior to the submission of an application and specify that students and experts in the planning, development, and implementation of innovative assessments must be among the stakeholders consulted. Students, especially English learners and students with disabilities, will be significantly affected by the implementation of an innovative assessment and considering their perspectives would help improve the likelihood that the innovative assessment promotes high-quality instruction and sufficient student supports. The proposed regulations would also require that experts be included in the collaboration given the technical challenges of designing and implementing innovative assessments or items that are aligned to challenging State academic standards and are valid, reliable, and of adequate quality for use in State accountability systems. Experts and other partners would provide additional guidance to SEAs and consortia, increasing the strength of their applications.

### Innovative assessment system requirements

Proposed §200.77(b) would organize and clarify the statutory requirements related to the design of innovative assessment systems that an SEA or consortium must address in its application for demonstration authority. Clarifying these requirements would help ensure that SEAs can provide a plan for how their innovative assessments does or will meet the relevant requirements under part A of title I, including for assessments to be valid, reliable, of high technical quality, and consistent with relevant, nationally recognized professional and technical standards and to provide for the participation of all students. Proposed §200.77(b) would also ensure that participating SEAs continue to administer reading/language arts and mathematics assessments to all students annually in grades 3-8 and once in high school, and science assessments to all students once in each grade span, even if students in some schools are taking the innovative assessment, while students in other schools take the statewide assessment. Further, proposed §200.77(b) would clarify that an SEA may develop an innovative assessment system for use only in certain grades or subjects so long as the statewide assessment is administered to students in participating schools in any required grade or subject in which the SEA is not using an innovative assessment. This would help ensure that an SEA developing an

innovative assessment in certain grades or subjects maintains its statewide assessments in other grades and subjects in order to comply with part A of title I during, and after, the demonstration authority period. We also note that an SEA or consortium may propose to develop and scale: (1) an innovative assessment to be used as its general assessment in reading/language arts, mathematics, or science; (2) an innovative alternate assessment to be used as its alternate assessment for students with the most significant cognitive disabilities in any of those subjects; or (3) both.

Proposed §200.77(b) would also clarify critical statutory requirements related to alignment with the State academic content standards, including the full depth and breadth of those standards, and the State academic achievement standards. These requirements would help ensure that all students are held to the same high expectations and that students not making progress toward those standards are identified so they can receive additional instruction and support. Further, these requirements would reinforce another innovative assessment system requirement: generating comparable, valid, and reliable results between the statewide and innovative assessment for all students and subgroups of students described in section 1111(b)(2)(B)(xi).

Comparable information about student achievement across schools using different assessments during the demonstration authority period is critical to ensure consistent information on student progress across the State and support valid, reliable, and fair accountability determinations. Consistent with the statute, the proposed regulations would require an SEA to have a plan, which would be evaluated in the application peer review, to annually determine comparability between the two assessment systems while providing the SEA flexibility to select the method of demonstration from a list of options, or to propose an alternative equally rigorous and statistically valid option for demonstrating comparability, based on its specific innovative assessment approach. The peer review will determine the extent to which the innovative assessment system is consistent with, or better than, the State academic assessment in: (1) the validity of inferences drawn about student achievement, (2) the alignment with challenging State academic standards, (3) the classification of students into achievement levels based on the same breadth of knowledge and skills, and (4) reliability, among other criteria. While there are several possible methods of demonstrating comparability across innovative and existing State assessments, a rigorous evaluation of comparability will best support the SEA's ability to meet the statutory requirements. Though innovative assessments need not be the same as existing State tests, the academic expectations they articulate and measure should be consistent. Further, with SEAs likely using both tests concurrently to make school accountability determinations for a period of time, student results must be sufficiently interchangeable for these purposes, making establishing comparability in a psychometrically acceptable manner urgently important. For these reasons, we are particularly interested in receiving comments on whether the options for evaluating comparability of student results from innovative assessments with respect to results from the State assessments will be effective; whether any additional options should be considered; and which options, if any, should not be included or should be modified.

Proposed §200.77(b) would also clarify the specific elements of the accountability system for which an SEA would need to demonstrate that its innovative assessment system generates consistent and comparable information between participating and non-participating schools and LEAs: progress toward the State's long-term goals for academic achievement for all students

and subgroups of students, and the Academic Achievement indicator used in the State's system of annual meaningful differentiation. Because the ESEA, as amended by the ESSA, relies on multiple measures for differentiation and identification of schools, it is helpful to clarify which measures must be comparable and identify those that are likely to be affected by implementation of the innovative assessment system. Further, proposed §200.77(b) would ensure that participating schools continue to be held accountable in the same ways as other schools in the State.

Participation in the demonstration authority should not exempt schools from accountability--only from administering the statewide test to all students in each required grade and subject for which an innovative assessment is used instead. The proposed regulations would ensure that all LEAs and schools across the State are treated fairly for accountability purposes and that all students receive the supports they need if their schools are low performing. For these reasons, each SEA would describe how it will continue to identify schools for comprehensive and targeted support and improvement, which would be facilitated by having a consistent measure of progress toward the State's long-term goals and on the Academic Achievement indicator.

Finally, proposed §200.77(b) would reinforce two other statutory requirements for innovative assessments that are designed to protect equity and promote inclusion of all students. Specifically, an SEA would be required to demonstrate that its innovative assessments provide for the participation of, and are accessible for, all students, including children with disabilities and English learners, by providing appropriate accommodations, where necessary. In addition, for purposes of school accountability under section 1111(c), an SEA must annually measure the academic progress of at least 95 percent of all students and 95 percent of students in each subgroup who are enrolled in schools that are participating under the demonstration authority. By requiring an SEA to include, with its application, a demonstration that it will satisfy these statutory requirements, proposed §200.77(b) would help ensure that the SEA has designed its innovative assessment system with these requirements in mind and can implement the system consistent with the requirements upon receiving demonstration authority.

#### Assurances

Proposed §200.77(d) would clarify the assurances each applicant for demonstration authority must provide. These assurances are related to use of the statewide assessments in schools that are initially not participating in the demonstration authority, as well as in participating schools if the innovative assessment is not given in all required grades and subjects or if the statewide assessment is used for accountability purposes in addition to the innovative assessment; the continued expectation for all students in the State to be held to the same challenging academic standards, including the provision of alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities; annual reporting of data to the Secretary pertaining to implementation of the demonstration authority and coordination with the Institute of Education Sciences; and the provision of information related to the innovative assessment system to parents, consistent with the testing transparency requirements in section 1112. Requiring these assurances would safeguard critical information on the progress of all students that is necessary for accountability and reporting on State and LEA report cards, ensure that the Department receives information necessary from each participating SEA on its progress in implementing and scaling its innovative



assessment over time, and promote greater understanding of the implications of a school's use of an innovative assessment among parents by ensuring this information is provided in ways that are accessible and understandable. It would also promote a proactive and supportive relationship between SEAs and the Department in providing technical assistance and guidance to promote high-quality implementation of the demonstration authority.

#### Selection criteria

The proposed regulations would also clarify that all applications from SEAs or consortia of SEAs must include information related to each selection criteria described in proposed §200.78 (i.e., project narrative, prior experience, capacity, and stakeholder support, timeline and budget, supports for educators and students, and evaluation and continuous improvement), so that the components of the application and application process are clear for all interested SEAs. In addition, this will ensure that all SEAs address the entirety of the selection criteria, increasing both the strength of SEA applications and their preparedness to implement the authority.

#### Initial implementation in a subset of LEAs or schools

The proposed regulations would also reinforce the statutory requirements related to an application from an SEA or consortium that is not proposing to use the innovative assessment initially in all LEAs or schools, including requirements to describe initially participating LEAs and schools and to include from each participating LEA an assurance that it will comply with relevant requirements. Given differences between LEAs, such as size and capacity, that affect the implementation of innovative assessments, proposed §200.77(e) would promote flexibility for SEAs in how they scale their innovative assessment system to be used statewide.

#### Applications from a consortium of States

Finally, proposed §200.77(f) would clarify how the requirements for demonstration authority apply to a consortium of SEAs. Working in partnership to develop an innovative assessment adds complexity to the work of developing and scaling the assessment, particularly because certain requirements, like alignment to challenging State academic standards, will be specific to individual member SEAs, while the work--and resources required--to meet other requirements, like providing appropriate accommodations, could be shared. As a result, participating in the authority as part of a consortium could promote more efficient development of innovative assessments, or lead to unnecessary delays in implementation. For these reasons, a consortium applicant would be required to describe its governance structure and member SEA roles, including financial responsibilities, as determined by its membership; how member SEAs will manage and share, at their discretion, any intellectual property developed by the consortium; and how the consortium will consider requests from additional States to join or leave the consortium. A consortium could also describe the role of affiliate SEA members. Each of these proposed requirements is critical to help ensure that the consortium is productive, that all required activities are completed by consortium members in a timely manner, and that the innovative assessment can be successfully implemented statewide and used for assessment, accountability, and reporting purposes under part A of title I at the end of the demonstration authority period in each SEA.

Proposed Regulations: Proposed §200.78 would clarify the selection criteria the Secretary will

use to evaluate an application to participate in the demonstration authority, which each SEA must address in its application. The proposed selection criteria fall in five broad areas: (1) project narrative described in proposed §200.78(a); (2) prior experience, capacity, and stakeholder support described in proposed §200.78(b); (3) timeline and budget described in proposed §200.78(c); (4) supports for educators and students described in proposed §200.78(d); and (5) evaluation and continuous improvement described in proposed §200.78(e).

### Project narrative

The first selection criteria that would be established in proposed §200.78(a) would consider the quality of an SEA's or consortium's plan for implementing the demonstration authority. In determining the quality of the plan, the Secretary would consider:

- The rationale for developing or selecting the proposed innovative assessment system, including the distinct purpose of each assessment; how the system will advance the design and delivery of large-scale assessment in innovative ways; and the extent to which the system as a whole will promote high-quality instruction, mastery of challenging State academic standards, and improved student outcomes for all students and subgroups of students under section 1111(c)(2).
- The SEA's or consortium's plan, developed in consultation with partners, if applicable, to: (1) develop and use standardized and calibrated scoring tools, rubrics, or other strategies, consistent with relevant nationally recognized professional and technical standards, to ensure high inter-rater reliability and comparability of innovative assessment results, which may include evidence of inter-rater reliability, if available; and (2) train evaluators to use these strategies.

Further, if the innovative assessment system will initially be administered in a subset of schools or LEAs, the Secretary would also consider:

- The strategies each SEA, including each SEA in a consortium, will use to scale the innovative assessment for use in all schools statewide, with its rationale for selecting those strategies.
- The strength of the SEA's or consortium's criteria for determining which LEAs and schools to include in its initial application and when to approve additional LEAs and schools, if applicable, to participate during the demonstration authority period.
- The SEA's plan, including each SEA in a consortium, for ensuring that the inclusion of new LEAs and schools continues to reflect high-quality and consistent implementation across demographically diverse LEAs and schools, or contributes to progress toward achieving such implementation across demographically diverse LEAs and schools, including diversity based on subgroups of students under section 1111(c)(2) and student achievement, during the demonstration authority period. The plan must also include annual benchmarks throughout the five-year demonstration authority period toward achieving high-quality and consistent implementation across LEAs over time that are, as a group, demographically similar to the State as a whole, using the demographics of LEAs initially participating as a baseline.
- The strategies the SEA, including each SEA in a consortium, will use to ensure that all students and each subgroup of students are held to the same challenging academic standards

under section 1111(b)(1) as all other students in the State.

Prior experience, capacity, and stakeholder support

Proposed §200.78(b) would establish selection criteria related to prior experience and capacity of an SEA, including each SEA in a consortium, and LEAs. An SEA may also describe the prior experience and capacity of any external partners that would support the development and implementation of the innovative assessment under the authority. In evaluating the extent and depth of experience, the Secretary would consider:

- The success and track record of efforts to implement innovative assessments or innovative assessment items aligned to the challenging State academic standards under section 1111(b)(1), in LEAs planning to participate; and
- The SEA's or LEA's development or use of: (1) effective supports and appropriate accommodations consistent with section 1111(b)(2) for all students, including English learners and children with disabilities, including professional development for school staff on providing such accommodations; (2) effective and high-quality supports for school staff to implement innovative assessments, including professional development; and (3) standardized and calibrated scoring rubrics with documented evidence of the validity, reliability, and comparability of determinations of student mastery or proficiency on the innovative assessments.

Each SEA would also be evaluated on the extent and depth of its capacity to successfully implement innovative assessments, including within each SEA in a consortium, and the quality of its plan to build its capacity, which may include how the SEA or consortium plans to enhance its capacity by collaborating with external partners that will be participating in or supporting its demonstration authority. In evaluating the extent and depth of the SEA and LEA capacity to implement innovative assessment demonstration authority, the Secretary would consider:

- An analysis of how capacity influenced the success of prior efforts to develop and implement innovative assessments or innovative assessment items.
- The strategies the SEA is using, or will use, to mitigate risks, including those identified in its analysis (e.g., risks associated with scaling the innovative assessment system to LEAs with varying levels of capacity, ensuring comparable and reliable scoring of innovative assessments for all students and subgroups of students, availability of funding and staff), and support successful implementation.

Finally, each SEA, including those in a consortia, would be evaluated on the extent and depth of State and local support for the application, as demonstrated by signatures from the following: superintendents (or equivalent) of LEAs; presidents of local school boards (or equivalent, where applicable); local teacher organizations (including labor organizations, where applicable); and additional affected stakeholders, such as parent organizations, civil rights organizations, and business organizations. In evaluating the strength of support, signatures from these groups from within LEAs participating in the first year of the demonstration authority would also be considered.

Proposed §200.78(b) also would describe factors that must be considered in evaluating capacity, including the availability of technological infrastructure; State and local laws;

dedicated and sufficient staffing, expertise, and resources; and other relevant factors.

### Timeline and budget

In determining the quality of the SEA's or consortium's timeline and budget for implementing demonstration authority, under proposed §200.78(c) the Secretary would consider:

- The extent to which the timeline reasonably demonstrates that each SEA will implement the innovative assessment system statewide by the end of the demonstration authority period, including a description of the activities to occur in each year, the parties responsible for those activities, and, if applicable, how the member SEAs in a consortium will implement activities at different paces and how the consortium will implement interdependent activities, so long as each member SEA begins using the innovative assessment system in the same school year, consistent with proposed §200.76(b)(1).
- The adequacy of the project budget for the duration of the requested demonstration authority period, including Federal funds (e.g., consistent with statutory requirements: State assessment grants under section 1201, grants for supporting effective instruction under section 2101, and consolidated funds for State administration under section 8201), as well as State, local, and non-public sources of funds, to support and sustain, as applicable, the activities in the SEA's or consortium's timeline. Considerations of the budget's adequacy would also include how funding be sufficient to meet expected costs as the SEA takes its innovative assessment system to scale and the degree to which funding is contingent upon future appropriations action at the State or local level or additional commitments from non-public sources of funds.

### Supports for educators and students

Proposed §200.78(d) would establish selection criteria related to the quality of supports that each SEA or consortium will use to improve instruction and student outcomes as part of innovative assessment implementation. In determining the quality of supports for educators and students, the Secretary would consider:

- The extent to which the SEA or consortium has developed, provided, and will continue to provide training to LEA and school staff, including teacher, principals, and other school leaders, that will familiarize them with the innovative assessment system, such as procedures for administration, scoring, and reporting.
- The strategies the SEA or consortium has developed and will use to familiarize students, teachers, principals, other school leaders, and other school and LEA staff with the innovative assessment system.
- The strategies the SEA or consortium will use to ensure that all students and each subgroup of students under section 1111(c)(2) in participating schools receive the support, including appropriate accommodations under section 1111(b)(2), they need to meet the challenging State academic standards under section 1111(b)(1).
- If the system includes assessment items that are developed or scored by teachers or other school staff, the strategies the SEA or consortium has developed, or plans to develop, to validly and reliably score those items in an unbiased and objective fashion, including how these

strategies engage and support teachers and staff in developing and scoring the assessments, and a description of how the SEA or consortium will use professional development to aid these efforts. Proposed §200.78(d) would also include examples of strategies, such as templates, prototypes, test blueprints, scoring tools, rubrics, audit plans, and other guides for educators.

#### Evaluation and continuous improvement

The final selection criteria that would be established in proposed §200.78(e) would consider the quality of the SEA's or consortium's plan to evaluate its implementation of innovative assessment demonstration authority. In determining the quality of its evaluation and continuous improvement plan, the Secretary would consider:

- The strength of its proposed annual evaluation of the innovative assessment system included in its application, including whether the evaluation will be conducted by an independent and experienced third party, and the likelihood this evaluation will sufficiently determine the system's validity, reliability, and comparability to the statewide assessment system consistent with the requirements in proposed §200.77(b)(4) and (9).
- The SEA's or consortium's plan for continuous improvement of its innovative assessment system, including its process for: (1) using data, feedback, evaluation results, and other information from participating LEAs and schools to make changes necessary to improve the quality of the innovative assessment system; and (2) evaluating and monitoring implementation of the innovative assessment system in participating LEAs and schools annually.

Reasons: Proposed §200.78 would set forth the selection criteria that will be used to evaluate applications for the innovative assessment demonstration authority. Selection criteria are useful for SEAs and the Department for several reasons. First, because only seven SEAs may be awarded demonstration authority during the initial demonstration period, peer reviewers and the Secretary will need criteria to assist them in determining which applicants are likely to be successful, and help select applicants in a situation where more than seven SEAs submit high-quality proposals. Additionally, the statutory requirements for the demonstration authority are extensive. By reflecting some of them in the selection criteria, proposed §200.78 would recognize that SEAs may benefit from having a plan to meet these requirements, so that they can improve and adjust their plans over time, based on the results of their initial implementation of an innovative assessment.

To support SEAs and consortia interested in applying, the proposed regulations would group similar selection criteria together into broad categories to provide clarity for SEAs as they develop applications and organize their work. The categories would be: project narrative; prior experience, capacity, and stakeholder support; timeline and budget; supports for educators and students; and evaluation and continuous improvement.

#### Project narrative

The selection criterion related to an SEA's or consortium's project plan is necessary to support the selection of SEAs for the demonstration authority that have a strong rationale behind their innovative assessment approach, and a clear theory of action to explain how this approach will promote better teaching and learning experiences and improved student outcomes. Further, this criterion will help support the development of an array of innovative assessments so that we

may learn from a variety of models, rather than establish a preference for one particular approach, and use the demonstration authority as a vehicle for promoting positive change in the design and delivery of large-scale academic assessments.

This criterion would also support SEAs in developing thoughtful plans to implement requirements of the demonstration authority that may be particularly complex and challenging, including reliable and valid scoring of innovative assessments across participating schools and LEAs and scaling the innovative assessment system to operate statewide. Given that the demonstration authority period may not exceed five years, SEAs and consortia will be most likely to succeed in scaling their innovative assessment system if they have strong criteria for determining when to add new LEAs or schools to the demonstration authority, with strategies to support this process, and a plan to implement the demonstration authority over time in LEAs that are demographically diverse and similar to the State as a whole, so that SEAs promote high-quality implementation of the innovative assessment for all students, including low-income students, minority students, English learners, and children with disabilities, and ensure the assessment is viable in a wide variety of LEA and school contexts.

#### Prior experience, capacity, and stakeholder support

Given the challenge of developing and scaling an innovative assessment system, proposed §200.78(b) would build on the statutory requirement for SEAs to have experience in innovative assessments by establishing selection criteria related to both prior experience and capacity to successfully complete the work. Asking prospective SEAs to examine the success and lessons learned from prior experiences with innovative assessments (which may include experiences learned from any external partners) would help reinforce other critical requirements for the demonstration authority like the inclusion of all students and producing reliable, comparable determinations of student proficiency. Creating selection criteria for experience would also encourage SEAs to plan and pilot their efforts at some level prior to submitting an application, so that they will successfully scale the assessment statewide within the requested demonstration authority period.

Similarly, establishing selection criteria based on the extent and depth of an SEA's and, if applicable, its LEAs' capacity and stakeholder support would also help ensure that the Secretary selects SEAs that are most likely to be successful and have critical support from leaders in participating LEAs, including LEA superintendents, local school boards, local teachers' organizations, and other affected constituencies in the community, such as parents, civil rights, and business organizations. Technological infrastructure, current State and local laws and policies, the availability of staff, expertise (e.g., engagement with technical experts, universities and other researchers, non-profits, and foundations), and other resources are all considerations that will affect whether an SEA can implement and scale an innovative assessment system that is valid, reliable, and high quality. Similarly, SEAs are unlikely to be able to develop and scale their innovative assessment if they do not have sufficient support from the local communities that are expected to implement the innovative assessment. These selection criteria would also provide some flexibility by providing SEAs an opportunity to include strategies they have or will use to mitigate risks and support successful implementation of the demonstration authority.

#### Timeline and budget

Proposed §200.78(c) would establish selection criteria related to the quality of an applicant's timeline and budget for implementing and scaling its innovative assessment system. A detailed timeline, along with adequate budgetary resources, are necessary to support SEAs in this work and to ensure that the Secretary awards demonstration authority to SEAs that are best-equipped to implement a high-quality, statewide innovative assessment within the requested demonstration authority period and, if needed, extension period under proposed §200.80(b).

Further, proposed §200.78(c) would recognize that some SEAs in a consortium may need more time than others to scale the innovative assessment by providing flexibility as to the pace of activities across SEAs in the consortium, so long as all member SEAs begin implementation of the innovative assessment in the first year of the demonstration authority period, consistent with the proposed definition in §200.76. Consistent with proposed §200.77(f), other SEAs may join the demonstration authority of the consortium at a future date when they are ready to implement and use the innovative assessment instead of their statewide academic assessments for accountability and reporting purposes.

#### Supports for educators and students

The fourth proposed selection criteria area would consider how SEAs will support educators and students to successfully implement the innovative assessment system. Each SEA or consortium would be evaluated on the quality of their supports in this area. Without a network of effective supports, and a strong rationale for selecting them, innovative assessments, regardless of the quality of their design, are unlikely to enhance classroom instruction and student outcomes. By including these statutory requirements as selection criteria, the Secretary would be better able to select applicants for demonstration authority whose innovative assessment systems are not only valid, reliable, and high-quality, but also most likely to lead to meaningful changes for students and teachers in daily classroom instruction.

#### Evaluation and continuous improvement

The final selection criteria area in proposed §200.78(e) would consider the quality of each SEA's or consortium's plan to annually evaluate its implementation of the innovative assessment system demonstration authority. These regulations are needed so that an SEA would be evaluated favorably for proposing an evaluation plan that is likely to provide unbiased results and sufficiently determine if its innovative assessment system is valid, reliable, and comparable with respect to the statewide assessment system, a key requirement that must be met to successfully transition to using the innovative assessment statewide for purposes of section 1111(b)(2) and 1111(c), consistent with proposed §200.79. Further, the selection criteria would support SEAs in developing a continuous improvement process that encourages adjustments in innovative assessments over time, based on lessons learned from implementation, and would help ensure that innovative assessments provide useful and timely information to educators and parents about a student's knowledge and abilities. Because innovative assessment approaches are novel, by design, a high-quality evaluation and continuous improvement process is critical to ensure that both SEAs and the Department learn from their experiences and make improvements over time, consistent with the assurance for annual reporting under proposed §200.77(d)(3)(A). Establishing this selection criterion would signal the importance for SEAs to create processes to enable these adjustments to be made from start to finish, instead of conducting an evaluation on the back-end when the results would be provided too late to inform the SEA's assessment design.

or implementation approach.

#### Section 200.79 Transition to statewide use

**Statute:** Section 1204(j) of the ESEA, as amended by the ESSA, permits an SEA to operate its innovative assessment system for the purposes of academic assessments and the statewide accountability system under section 1111(b) and (c) if, at the conclusion of the demonstration authority period or extension period, the SEA has scaled the system to be used statewide and demonstrated that the system is of high quality, as determined by the Secretary through the peer review process described in section 1111(a)(4). Section 1204(j) specifies that an innovative assessment system is of high quality if:

- (1) It meets all requirements of section 1204;
- (2) The SEA has examined the effects of the system on other measures of student success, including indicators in the statewide accountability system under section 1111(c)(4)(B);
- (3) The system provides coherent and timely information about student achievement based on the challenging State academic standards, including objective measurements of academic achievement, knowledge, and skills, that is valid, reliable, and consistent with relevant, nationally recognized professional and technical standards;
- (4) The SEA has solicited feedback from teachers, principals, other school leaders, and parents about their satisfaction with the system; and
- (5) The SEA has demonstrated that the system was used to measure: (a) the achievement of all students that participated in the system; and (b) the achievement of not less than the same percentage of students overall and in each of the subgroups of students in section 1111(c)(2), as measured under section 1111(c)(4)(E), as were assessed with the academic assessments required by section 1111(b)(2).

Section 1204(j) specifies that, in determining whether an innovative assessment system is of high quality based on the factors listed, the baseline year for an affected LEA is the first year in which the LEA used the system.

**Current Regulations:** None.

**Proposed Regulations:** In general, proposed §200.79 would implement and clarify the statutory provisions in section 1204(j) of the ESEA, as amended by the ESSA. Consistent with section 1204(j), proposed §200.79(a) would permit an SEA to request that the Secretary determine whether the SEA's innovative assessment system is of high quality and may be used for purposes of academic assessments and the statewide accountability system under section 1111(b)(2) and (c). Proposed §200.79(a) would clarify that the SEA may use the system for such purposes only after the Secretary determines that the system is of high quality.

Proposed §200.79(b) would provide the criteria for the Secretary to use in determining at the end of the demonstration authority period (through the peer review process of assessments and accountability systems described in section 1111(a)(4)) whether an innovative assessment system is of high quality, including that each innovative assessment in a required grade or



subject meets all of the requirements of section 1111(b)(2) and the statutory requirements in section 1204 specific to an innovative assessment. Specifically:

- Regarding the criterion that an SEA has examined the effects of the system on other measures of student success, including indicators in the statewide accountability system under section 1111(c)(4)(B), proposed §200.79(b) would require the SEA to demonstrate it has examined the statistical relationship between student performance on the innovative assessment in each subject area and on the other measures in remaining indicators in the statewide accountability system (i.e., Graduation Rate, Academic Progress, Progress in Achieving English Language Proficiency, and School Quality or Student Success), for each grade span in which an innovative assessment is used and how the use of an innovative assessment in the Academic Achievement indicator affects meaningful differentiation of schools.
- Regarding the criterion that an SEA has solicited feedback from teachers, principals, other school leaders, parents, and other affected stakeholders described in proposed §200.77(a)(2)(i)-(v) about their satisfaction with the innovative assessment system, proposed §200.79(b) would require the SEA to have solicited and taken into account feedback from these groups.
- Regarding the criterion that an SEA demonstrate that the innovative assessment system was used to measure the achievement of all students, proposed §200.79(b) would require that such a demonstration be provided for all students and each subgroup of students under section 1111(c)(2) and include how appropriate accommodations were provided consistent with section 1111(b)(2).

Proposed §200.79(c) would implement the provision in section 1204(j) specifying that, in determining whether an innovative assessment system is of high quality, the baseline year for an affected LEA is the first year in which the LEA used the system.

Finally, proposed §200.79(d) would clarify, in the case of a consortium of SEAs, that each SEA must submit evidence to the Secretary to determine whether the innovative assessment system is of high quality and, if evidence is submitted for the consortium as a whole, the evidence must demonstrate how each member SEA meets each requirement of proposed §200.79(b) applicable to an SEA.

Reasons: Proposed §200.79 would clarify the statutory requirements, including peer review under proposed §200.79(a)-(b), for how an SEA can transition from implementing an innovative assessment system under the demonstration authority to implementing an innovative assessment system as part of its statewide assessment system under title I, part A of the ESEA.

The proposed regulations are necessary to ensure that innovative assessments, before they are used for purposes of both State assessments and accountability under part A of title I, meet the same requirements that all State academic assessments must meet, including, but not limited to, alignment to challenging State academic standards, validity, reliability, technical quality, and accessibility for all students. These proposed regulations would help ensure that innovative assessments are treated similarly in terms of the peer review process, rather than held to a different standard than other academic assessments States may use under title I, part A while also incorporating the unique requirements innovative assessments must meet under the statutory provisions in section 1204(j)(1)(B).

Further, proposed §200.79(b) would support an SEA in meeting these specific requirements. For example, in demonstrating the SEA has examined the effects of its innovative assessments on other measures of student success in the accountability system, the proposed regulations would clarify that this means examining the statistical relationship between student performance in each subject area on the innovative assessment and student performance on the remaining indicators in the State accountability system within a particular grade-span, such as the Graduation Rate, Academic Progress, and School Quality or Student Success indicators. This would provide the SEA and the Department with a better understanding of how the innovative assessments relate to or correlate with other student performance data and how their inclusion in the State accountability system will affect the ability of the system to meaningfully differentiate among all public schools, as required under section 1111(c).

Proposed §200.79(d) would also provide flexibility for how SEAs participating in the demonstration authority within a consortium may transition to using the innovative assessments for purposes of part A of title I so that SEA members of the consortium that have reached statewide implementation of the innovative assessment system may undergo peer review of the system on their own, recognizing that not all SEA members may be implementing the innovative assessments on the same timeline under proposed §200.77(b).

By clarifying the process for transition to statewide use in these ways, proposed §200.79 would provide essential safeguards to maintain high-quality, annual assessments and information about student progress toward meeting the challenging State academic standards for parents, educators, administrators, and the public.

#### Section 200.80 Extension, waivers, and withdrawal of authority

Statute: Section 1204(g) of the ESEA, as amended by the ESSA, permits the Secretary to extend a demonstration authority for an additional two years if the SEA provides evidence that its innovative assessment system continues to meet the requirements of section 1204(c) [sic] of the ESEA, as amended by the ESSA, and that the SEA has a plan for, and capacity to, transition to statewide use of the system by the end of the extension period.

Section 1204(i) of the ESEA, as amended by the ESSA, requires the Secretary to withdraw an SEA's demonstration authority if, at any time during the demonstration authority period or extension period, the SEA cannot provide evidence to the Secretary that: (1) it has a high-quality plan to transition to statewide use of its innovative assessment system by the end of the demonstration authority period or extension period (if the system will initially be administered in a subset of LEAs); and (2) its innovative assessment system:

- (a) Meets the requirements in section 1204(c) [sic];
- (b) Includes all students attending participating schools, including each of the subgroups of students in section 1111(c)(2);
- (c) Provides an unbiased, rational, and consistent determination of progress toward the long-term academic achievement goals described under section 1111(c)(4)(A)(i) for all students in participating schools, which are comparable to measures of academic achievement under section 1111(c)(4)(B)(i) across the State; and

(d) Demonstrates comparability to the statewide assessments under section 1111(b)(2) in content coverage, difficulty, and quality.

Section 1204(j) of the ESEA, as amended by the ESSA, permits an SEA to request, and the Secretary to grant, a delay of the withdrawal of the demonstration authority under section 1204(i) of the ESEA, as amended by the ESSA, for the purpose of providing the SEA with the time necessary to transition to statewide use of its innovative assessment system if, at the conclusion of the SEA's demonstration authority period and two-year extension, the State has otherwise met and continues to comply with all requirements of section 1204 of the ESEA, as amended by the ESSA, and provides a high-quality plan for transition to statewide use of the system in a reasonable period of time.

Current Regulations: None.

Proposed Regulations: Proposed §200.80(a) would implement the statutory provision permitting the Secretary to extend demonstration authority for an additional two years (i.e., one two-year extension, or two one-year extensions) if the SEA provides evidence that:

- Its innovative assessment system continues to meet the requirements of title I, part B of the ESEA, as amended by the ESSA;
- It is implementing the authority consistent with its application for demonstration authority; and
- The SEA has a plan for, and capacity to, transition to statewide use of the system by the end of the extension period.

Proposed §200.80(a) would also specify that the SEA's plan to transition to statewide use must include input from the stakeholders in proposed §200.77(a)(2)(i)-(v) and that the SEA's evidence of capacity to transition to statewide use must be provided for the SEA and each LEA not currently participating. Proposed §200.80(a) would further clarify that, in the case of a consortium, the Secretary may extend demonstration authority for the consortium as a whole or for individual member SEAs, as necessary.

Proposed §200.80(b) would implement the statutory requirements for the Secretary to withdraw an SEA's demonstration authority, with the following clarifications:

- Regarding the SEA's high-quality plan to transition to statewide use of an innovative assessment, proposed §200.80(b)(i) would require that the plan include input from all stakeholders in proposed §200.77(a)(2)(i)-(v).
- Regarding evidence an SEA may be asked to provide, proposed §200.80(b)(ii) would clarify that evidence may be requested related to how the SEA has met all requirements for innovative assessments under proposed §200.77, including §200.77(b), and how the SEA is implementing the authority in accordance with its responses to the selection criteria under proposed §200.78.
- Regarding evidence of inclusion of all students in participating schools that an SEA may be asked to provide, proposed §200.80(b)(ii) would require that such evidence include how the

system provides for appropriate accommodations consistent with section 1111(b)(2).

- Regarding evidence that the system provides unbiased, rational, and consistent determinations of progress toward academic achievement goals that an SEA may be asked to provide, proposed §200.80(b)(ii) would require that such determinations consider the long-term goals and measurements of interim progress described in section 1111(c)(4)(A) for all students and subgroups of students listed in section 1111(c)(2), and provide a comparable measure of performance, including with data comparing performance disaggregated by subgroup, on the Academic Achievement indicator under section 1111(c)(4)(B) for participating schools relative to non-participating schools.

Further, proposed §200.80(b)(2) would clarify that, in the case of a consortium: (1) the Secretary may withdraw the demonstration authority provided to the consortium as a whole if the Secretary requests, and no member SEA presents, the required information in a timely manner; and (2) a consortium may continue to operate after one or more of its members has had its authority withdrawn, so long as remaining member SEAs continue to meet all requirements.

Proposed §200.80(c) would implement the statutory requirements regarding delay of the withdrawal of demonstration authority, with the following specifications:

- Proposed §200.80(c) would require that a waiver to delay withdrawal of demonstration authority may be awarded by the Secretary to an SEA for one year.
- Regarding the SEA's high-quality plan to transition to statewide use in a reasonable period of time, proposed §200.80(c) would require the plan to include input from the stakeholders in proposed §200.77(a)(2)(i)-(v).
- Regarding a consortium, proposed §200.80(c) would permit the Secretary to grant a one-year waiver for the consortium as a whole or individual member SEAs, as needed.

Finally, proposed §200.80(d) would clarify that an SEA must return to using, in all LEAs and schools, an annual statewide assessment system that meets the requirements of section 1111(b)(2), if the Secretary withdraws demonstration authority or if the SEA voluntarily decides to terminate use of the innovative assessment system, and notify participating LEAs that authority has been withdrawn and of the SEA's plan to transition back to a statewide assessment.

Reasons: Proposed §200.80(a) would provide clarity to SEAs and consortia that require additional time, beyond the demonstration authority period of five years, to scale their innovative assessment system statewide and successfully submit the system for approval for use under part A of title I through the peer review process for assessments and accountability systems described in proposed §200.79. These clarifications would recognize that taking an innovative assessment system to scale is challenging and complex work, while also providing necessary guardrails to ensure that an SEA requesting an extension of authority, for up to two years, has developed a high-quality plan and necessary capacity to implement the innovative assessment in all remaining LEAs and schools by the end of the extension. As the purpose of the authority is to develop a new statewide innovative assessment system, rather than operate multiple assessments in perpetuity, the proposed regulations would strike a balance between flexibility for States and the expectation to scale innovative assessments in a reasonable timeframe.

Similarly, proposed §200.80(c) would clarify the purpose of the statutory provision allowing for waivers under section 1204(j)(3) of the ESEA, as amended by the ESSA, for SEAs that need additional time after the extension period to implement the innovative assessment system statewide for purposes of part A of title I. By specifying that the purpose of a waiver is to provide an SEA with an additional year, after the expiration of the extension period, in order to receive final approval from the Secretary, through peer review, to use its innovative assessment under part A of title I, the proposed regulations would help distinguish between the purpose of an extension (i.e., to finish scaling the innovative assessment statewide) and a waiver (i.e., to provide time for SEAs to complete the peer review process). Together, these provisions would provide needed flexibility for SEAs that require more time, without undermining the ultimate goal of the demonstration authority to develop an innovative assessment that meets the statutory requirements for statewide assessments under part A of title I.

Proposed §200.80(b) and (d) are necessary to clarify the provisions for withdrawal of demonstration authority. Because withdrawal of demonstration authority is a significant consequence for SEAs that have invested time and resources in developing an innovative assessment, we believe it is critical to provide States clear guidance around transitioning away from exclusively using innovative assessments in some LEAs and to clarify the reasons enumerated in the statute for which an SEA may lose demonstration authority, including lacking a high-quality plan for transition to statewide use or failure to meet statutory requirements for the quality of innovative assessments, such as validity, reliability, technical quality, accessibility, and comparability. The proposed regulations would also help maintain similar expectations for the quality of innovative assessments across all participating SEAs, including SEAs in a consortium, by not unfairly penalizing all member SEAs in a consortium for poor implementation by one of its members.

Together, these clarifications are necessary in order to ensure that States continue to administer high-quality assessments annually to all students and provide critical information on student progress to parents, educators, and the public, even if the Secretary withdraws authority or if an SEA voluntarily ceases implementation of its innovative assessment. In this way, proposed §200.80 would underscore the importance of having annual information on student progress not only for purposes of accountability and reporting, as required in the statute, but also for informing high-quality instruction tailored to students' needs and empowering parents and families in supporting their child's education.

### Executive Orders 12866 and 13563

#### Regulatory Impact Analysis

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 the Office of Management and Budget (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 stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with

State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action and the potential costs and benefits. Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

#### Need for Regulatory Action

As discussed in detail in the Significant Proposed Regulations section of this document, the Department believes that regulatory action is needed to ensure effective implementation of section 1204 of the ESEA, as amended by the ESSA, which permits the Secretary to provide an SEA or consortium of SEAs that meets the application requirements with authority to establish, operate, and evaluate a system of innovative assessments. Crucially, the Department believes that regulatory action is needed to ensure that these assessments ultimately can meet requirements for academic assessments and be used in statewide accountability systems under section 1111 of the ESEA, as amended by the ESSA, including requirements for assessment validity, reliability, technical quality, and alignment to challenging State academic standards. Absent regulatory action, SEAs implementing innovative assessment authority run a greater risk of developing assessments that are inappropriate or inadequate for these purposes, which could hinder State and local efforts to provide all children significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps consistent with the purpose of title I of the ESEA, as amended by the ESSA. By increasing the likelihood that innovative academic assessments are both high quality and can be used in an SEA's statewide accountability system under section 1111 of the ESEA, as amended by the ESSA, as demonstrated through the peer review process under section 1111(a)(4) at the end of the SEA's demonstration authority period, these regulations also have the potential to provide proof points for other States so that those not participating may consider and benefit from high-quality, innovative assessment models developed under the demonstration authority.

#### Discussion of Potential Costs and Benefits

The primary benefit of the regulations proposed in this document is the administration of statewide assessments that more effectively measure student mastery of challenging State academic standards and better inform classroom instruction and student supports, ultimately leading to improved academic outcomes for all students. We believe that this benefit outweighs associated costs to a participating SEA, which may be financed with funds received under the Grants for State Assessments and Related Activities program and funds reserved for State administration under part A of title I.

Participation in the innovative assessment demonstration authority is voluntary and limited during the initial demonstration period to seven SEAs. In light of the initial limits on participation, the number and rigor of the statutory application requirements, and the high degree of technical complexity involved in establishing, operating, and evaluating innovative assessment systems, we anticipate that few SEAs will seek to participate. Based on currently available information, we estimate that, initially, up to five SEAs will apply.

For those SEAs that apply and are provided demonstration authority (consistent with the proposed regulations), implementation costs may vary considerably based on a multitude of

factors, including: the number and type(s) of assessments the SEA elects to include in its system; the differences between those assessments and the SEA's current statewide assessments, including with respect to assessment type, use of assessment items, and coverage of State academic content standards; the number of grades and subjects in which the SEA elects to administer those assessments; whether the SEA will implement its system statewide upon receiving demonstration authority and, if not, the SEA's process and timeline for scaling the system up to statewide implementation; and whether the SEA is part of a consortium (and thus may share certain costs with other consortium members). Because of the potential wide variation in innovative assessment systems along factors such as these, we do not believe we can produce useful or reliable estimates of the potential cost to implement the innovative assessment demonstration authority for the typical SEA participant and, for the purpose of determining whether it is feasible to provide estimates of implementation cost under the final regulations, will consider input from interested SEAs regarding their anticipated costs and the extent to which those costs can be met with Federal funds.

### Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, §200.76 Innovative assessment demonstration authority.)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or school districts (LEAs) with a population of less than 50,000. Although the



majority of LEAs qualify as small entities under this definition, the regulations proposed in this document would not have a significant economic impact on a substantial number of small LEAs because few SEAs are expected to implement innovative assessment demonstration authority and the implementation costs for those SEAs and their participating LEAs can be supported with Federal grant funds. We believe the benefits provided under this proposed regulatory action would outweigh the associated costs for these small LEAs. In particular, the proposed regulations would help ensure that the LEAs can implement assessments that measure student mastery of State academic content standards more effectively and better inform classroom instruction and student supports, ultimately leading to improved academic outcomes for all students. We invite comments from small LEAs as to whether they believe the proposed regulations would have a significant economic impact on them and, if so, request evidence to support that belief.

### Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 200.76(c), 200.77, and 200.78 of the proposed regulations contain information collection requirements. The Department is developing an Information Collection Request based upon these proposed regulations, and will submit a copy of these sections and the information collection instrument to OMB for its review before requiring the submission of any information based upon these regulations.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

### Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

### Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although we do not believe the

proposed regulations would have federalism implications, we encourage State and local elected officials to review and provide comments on these proposed regulations.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: 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 via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs--education, Indians--education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

Dated:

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John B. King, Jr.,  
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200--TITLE I--IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

AUTHORITY: 20 U.S.C 6301-6576, unless otherwise noted.

2. Add a new undesignated center heading following §200.75 to read as follows:

Innovative Assessment Demonstration Authority

3. Section 200.76 is revised to read as follows:

§200.76 Innovative assessment demonstration authority.

(a) In general. (1) The Secretary may provide an SEA, or consortium of SEAs, with authority to establish and operate an innovative assessment system in its public schools (hereinafter referred to as “innovative assessment demonstration authority”).

(2) An SEA or consortium of SEAs may implement the innovative assessment demonstration authority during its demonstration authority period and, if applicable, extension or waiver period described in §200.80(a) and (c), after which the Secretary will either approve the system for statewide use consistent with §200.79 or withdraw the authority consistent with §200.80(b).

- (b) Definitions. For purposes of §§200.76 through 200.80--

(1) Demonstration authority period refers to the period of time over which an SEA, or consortium of SEAs, is authorized to implement the innovative assessment demonstration authority, which may not exceed five years and does not include the extension or waiver period under §200.80. An SEA must use its innovative assessment system in all participating schools instead of, or in addition to, the statewide assessment under section 1111(b)(2) of the Act for purposes of accountability and reporting under section 1111(c) and 1111(h) of the Act in each year of the demonstration authority period.

(2) Innovative assessment system means a system of reading/language arts, mathematics, or science assessments administered in at least one required grade under section 1111(b)(2)(B)(v) of the Act that produces an annual summative determination of grade-level achievement aligned to the State’s challenging academic standards under section 1111(b)(1) of the Act for each student, or in the case of a student assessed using an alternate assessment aligned with alternate academic achievement standards under section 1111(b)(1)(E) of the Act, an annual summative determination relative to such alternate academic achievement standards for each such student, and that may include one or more of the following types of assessments:

- (i) Cumulative year-end assessments.
- (ii) Competency-based assessments.

- (iii) Instructionally embedded assessments.
- (iv) Interim assessments.
- (v) Performance-based assessments.
- (vi) Another innovative assessment design that meets the requirements under §200.77(b).

(c) Peer review of applications. (1) An SEA or consortium of SEAs seeking innovative assessment demonstration authority under paragraph (a) of this section must submit an application to the Secretary that demonstrates how the applicant meets all application requirements under §200.77 and that addresses all selection criteria under §200.78.

(2) The Secretary uses a peer review process, including a review of the SEA's application to determine that it has met each of the requirements under §200.77 and sufficiently addressed each of the selection criteria under §200.78, to inform the Secretary's decision of whether to award the innovative assessment demonstration authority to an SEA or consortium of SEAs. Peer review teams consist of experts and State and local practitioners who are knowledgeable about innovative assessment systems, including--

(i) Individuals with past experience developing innovative assessment and accountability systems that support all students and subgroups of students under section 1111(c)(2) of the Act (e.g., psychometricians, measurement experts, researchers); and

(ii) Individuals with experience implementing such innovative assessment and accountability systems (e.g., State and local assessment directors, educators);

(3)(i) If points or weights are assigned to the selection criteria under §200.78, the Secretary will inform applicants in the application package or a notice published in the Federal Register of--

(A) The total possible score for all of the selection criteria under §200.78; and

(B) The assigned weight or the maximum possible score for each criterion or factor under that criterion.

(ii) If no points or weights are assigned to the selection criteria and selected factors under §200.78, the Secretary will evaluate each criterion equally and, within each criterion, each factor equally.

(d) Initial demonstration period. (1) The initial demonstration period includes the first three years in which the Secretary awards at least one SEA, or consortium of SEAs, with the innovative assessment demonstration authority, concluding with publication of the progress report described in section 1204(c) of the Act. During the initial demonstration period, the Secretary may provide innovative assessment demonstration authority to--

(i) No more than seven SEAs in total, including those SEAs participating in consortia; and

(ii) Consortia that include no more than four SEAs.

(2) An SEA that is affiliated with a consortium, but not currently proposing to use its innovative assessment system under the demonstration authority, is not included in the application under paragraph (c) of this section or counted toward the limitation in consortia size under paragraph (d)(ii) of this section.

(Authority: 20 U.S.C. 6364; 20 U.S.C. 1221e-3)

4. Section 200.77 is revised to read as follows:

§200.77 Demonstration authority application requirements.

An SEA or consortium of SEAs seeking the innovative assessment demonstration authority must submit to the Secretary an application that includes the following:

(a) Consultation. Evidence that the SEA or consortium has developed an innovative assessment system in collaboration with partners, including--

(1) Experts in the planning, development, implementation, and evaluation of innovative assessment systems; and

(2) Affected stakeholders in the State, or in each State in the consortium, including--

(i) Those representing the interests of children with disabilities, English learners, and other subgroups of students under section 1111(c)(2) of the Act;

(ii) Teachers, principals, and other school leaders;

(iii) LEAs;

(iv) Students and parents; and

(v) Civil rights organizations.

(b) Innovative assessment system. A demonstration that the innovative assessment system does or will--

(1) Meet the requirements of section 1111(b)(2)(B) of the Act, except that an innovative assessment--

(i) Need not be the same assessment administered to all public elementary and secondary school students in the State during the demonstration authority period, if the innovative assessments will be administered initially in a subset of LEAs, or schools within an LEA, provided that the statewide academic assessments under section 1111(b)(2) of the Act are administered in any school that is not participating in the innovative assessments; and

(ii) Need not be administered annually in each of grades 3-8 and at least once in grades 9-12 in the case of reading/language arts and mathematics assessments, and at least once in grades 3-5, 6-9, and 10-12 in the case of science assessments, so long as the statewide academic assessments under section 1111(b)(2) of the Act are administered in any required grade and subject in which the SEA does not choose to implement an innovative assessment;

(2) Align with the State academic content standards under section 1111(b)(1) of the Act, including the full depth and breadth of such standards;

(3) Express student results or competencies in terms consistent with the State's academic achievement standards under section 1111(b)(1) of the Act and identify which students are not making sufficient progress toward, and attaining, grade-level proficiency on such standards;

(4) Provide for comparability to the State academic assessments under section 1111(b)(2) of the Act, including by generating results that are valid, reliable, and comparable for all students and for each subgroup of students under section 1111(b)(2)(B)(xi) of the Act, as compared to the results for such students on the State assessments. Consistent with the SEA's or consortium's evaluation plan under §200.78(e), the SEA must plan to annually determine comparability during each year of its demonstration authority period in one of the following ways:

(i) Administering full assessments from both the innovative and statewide assessment system to all students enrolled in schools participating in the demonstration authority, such that at least once in any grade span (e.g., 3-5, 6-8, or 9-12) and subject for which there is an innovative assessment, a statewide assessment in the same subject would also be administered to all such students. As part of this demonstration, the innovative assessment and statewide assessment need not be administered to an individual student in the same school year.

(ii) Administering full assessments from both the innovative and statewide assessment system to a demographically representative sample of students and subgroups of students under section 1111(c)(2) of the Act, from among those students enrolled in schools participating in the demonstration authority, such that at least once in any grade span (e.g., 3-5, 6-8, or 9-12) and subject for which there is an innovative assessment, a statewide assessment in the same subject would also be administered in the same school year to all students included in the sample.

(iii) Including, as a significant portion of the innovative and statewide assessment systems in each required grade and subject in which both assessments are administered, common items that, at a minimum, have been previously pilot tested or field tested for use in either the statewide or innovative assessment system.

(iv) An alternative method for demonstrating comparability that an SEA can demonstrate will provide for an equally rigorous and statistically valid comparison between student performance on the innovative assessment and the existing statewide assessment, including for each subgroup of students under section 1111(b)(2)(B)(xi) of the Act.

(5) Provide for the participation of, and be accessible for, all students, including children with disabilities and English learners, provide appropriate accommodations consistent with section 1111(b)(2) of the Act, and, as appropriate, incorporate the principles of universal design for learning;

(6) For purposes of the State accountability system consistent with section 1111(c)(4)(E) of the Act, annually measure in participating schools the progress on the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act of at least 95 percent of all students, and 95 percent of students in each subgroup of students under section 1111(c)(2) of the Act, who are required to take such assessments consistent with paragraph (b)(1)(ii) of this section;

(7) Generate an annual summative determination for each student in a school participating in the demonstration authority that describes the student's mastery of the State's grade-level academic content standards based on the State's academic achievement standards under section 1111(b)(1) of the Act, or in the case of a student assessed using an alternate assessment aligned to alternate academic achievement standards under section 1111(b)(1)(E) of the Act, an annual summative determination relative to such alternate academic achievement standards for each such student, using the annual data from the innovative assessment;

(8) Provide disaggregated results by each subgroup of students under section 1111(b)(2)(B)(xi) of the Act, including timely data for teachers, principals and other school leaders, students, and parents consistent with section 1111(b)(2)(B) and (h) of the Act, and provide results to parents in a manner consistent with paragraph (c)(4)(i) of this section; and

(9) Provide an unbiased, rational, and consistent determination of progress toward the State's long-term goals under section 1111(c)(4)(A) of the Act for all students and each subgroup of students under section 1111(c)(2) of the Act and a comparable measure of student performance on the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act for participating schools relative to non-participating schools so that the SEA may validly and reliably aggregate data from the system for purposes of meeting requirements for--

(i) Accountability under section 1111(c) of the Act, including how the SEA will identify participating and non-participating schools in a consistent manner for comprehensive and targeted support and improvement; and

(ii) Reporting on State and LEA report cards under section 1111(h) of the Act.

(c) Selection Criteria. Information that addresses each of the selection criteria under §200.78.

(d) Assurances. Assurances that the SEA, or each SEA in the consortium, will--

(1) Continue use of the statewide academic assessments in reading/language arts, mathematics, and science required under section 1111(b)(2)(B) of the Act--

(i) In all schools that are not participating in the innovative assessment demonstration authority; and

(ii) In all schools that are participating in the innovative assessment demonstration authority but for which such assessments will be used in addition to innovative assessments for accountability purposes under section 1111(c) of the Act consistent with paragraph (b)(1)(ii) of this section or for evaluation purposes consistent with §200.78(e) during the demonstration authority period;

(2) Ensure that all students and each subgroup of students under section 1111(c)(2) of the Act in participating schools and LEAs are held to the same challenging academic standards under section 1111(b)(1) of the Act as all other students, except that students with the most significant cognitive disabilities may be assessed with alternate assessments aligned to alternate academic achievement standards consistent with section 1111(b)(2)(D) of the Act, and receive the instructional support needed to meet such standards;

(3) Report the following annually to the Secretary:

(i) An update on implementation of the innovative assessment demonstration authority, including--

(A) The SEA's progress against its timeline under §200.78(c) and any outcomes or results from its evaluation and continuous improvement process under §200.78(e); and

(B) If the innovative assessment system is not yet implemented statewide, a description of the SEA's progress in scaling up the system to additional LEAs or schools consistent with its strategies under §200.78(a)(4).

(ii) The performance of all participating students at the State, LEA, and school level, for all students and disaggregated for each subgroup of students under section 1111(c)(2) of the Act, on the innovative assessment, except that such data may not reveal any personally identifiable information.

(iii) If the innovative assessment system is not yet implemented statewide, school demographic and student achievement information, including for the subgroups of students under section 1111(c)(2) of the Act, for participating schools and LEAs and for any schools or LEAs that will participate for the first time in the following year, and a description of how the participation of any additional schools or LEAs in that year contributes to progress toward achieving high-quality and consistent implementation across demographically diverse LEAs in the State consistent with the SEA's benchmarks described in §200.78(a)(4)(iii).

(iv) Feedback from teachers, principals, other school leaders, parents, and other stakeholders consulted under §200.77(a)(2)(i)-(v) from participating schools and LEAs about their satisfaction with the innovative assessment system;

(4) Ensure that each LEA informs parents of students in participating schools about the innovative assessment consistent with section 1112(e)(2)(B) of the Act at the beginning of each school year during which an innovative assessment will be implemented. Such information must be--

(i) In an understandable and uniform format;

(ii) To the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(iii) Upon request by a parent who is an individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12101, provided in an alternative format accessible to that parent; and

(5) Coordinate with and provide information to, as applicable, the Institute of Education Sciences for purposes of the progress report described in section 1204(c) of the Act and ongoing dissemination of information under section 1204(m) of the Act.

(e) Initial implementation in a subset of LEAs or schools. If the system will initially be administered in a subset of LEAs or schools in a State--



(1) A description of each LEA, and each of its participating schools, that will initially participate, including demographic information and its most recent LEA report card under section 1111(h)(2) of the Act; and

(2) An assurance from each participating LEA that the LEA will comply with all requirements of this section.

(f) Applications from a consortium. If submitted by a consortium of SEAs--

(1) A description of the governance structure of the consortium, including--

(i) The roles and responsibilities of each member SEA, which may include a description of affiliate members, if applicable, not seeking demonstration authority to implement the innovative assessment system and must include a description of financial responsibilities of member SEAs;

(ii) How the member SEAs will manage and, at their discretion, share intellectual property developed by the consortium as a group; and

(iii) How the member SEAs will consider requests from SEAs to join or leave the consortium and ensure that changes in membership do not affect the consortium's ability to implement innovative assessment demonstration authority consistent with the requirements and selection criteria in §§200.77 and 200.78.

(Authority: 20 U.S.C. 6364; 20 U.S.C. 1221e-3)

5. Section 200.78 is revised to read as follows:

§200.78 Demonstration authority selection criteria.

The Secretary reviews an application by an SEA or consortium of SEAs seeking innovative assessment demonstration authority consistent with §200.76(c) based on the following selection criteria:

(a) Project narrative. The quality of the SEA's or consortium's plan for implementing innovative assessment demonstration authority. In determining the quality of the plan, the Secretary considers--

(1) The rationale for developing or selecting the particular innovative assessment system to be implemented under the demonstration authority, including--

(i) The distinct purpose of each assessment that is part of the innovative assessment system and how the system will advance the design and delivery of large-scale, statewide academic assessments in innovative ways; and

(ii) The extent to which the innovative assessment system as a whole will promote high-quality instruction, mastery of challenging State academic standards, and improved student outcomes, including for each subgroup of students under section 1111(c)(2) of the Act;

(2) The plan the SEA or consortium, in consultation with its partners, if applicable, has to--

(i) Develop and use standardized and calibrated scoring tools, rubrics, or other strategies throughout the demonstration authority period, consistent with relevant nationally recognized professional and technical standards, to ensure inter-rater reliability and comparability of innovative assessment results, which may include evidence of inter-rater reliability; and

(ii) Train evaluators to use such strategies; and

(3) If the system will initially be administered in a subset of schools or LEAs in a State--

(i) The strategies the SEA, including each SEA in a consortium, will use to scale the innovative assessment to all schools statewide, with a rationale for selecting those strategies;

(ii) The strength of the SEA's or consortium's criteria that will be used to determine LEAs and schools that will initially participate and when to approve additional LEAs and schools, if applicable, to participate during the requested demonstration authority period; and

(iii) The SEA's plan, including each SEA in a consortium, for how it will ensure that, during the demonstration authority period, the inclusion of additional LEAs and schools continues to reflect high-quality and consistent implementation across demographically diverse LEAs and schools, or contributes to progress toward achieving such implementation across demographically diverse LEAs and schools, including diversity based on subgroups of students under section 1111(c)(2) of the Act, and student achievement. The plan must also include annual benchmarks toward achieving high-quality and consistent implementation across LEAs that are, as a group, demographically similar to the State as a whole during the demonstration authority period, using the demographics of LEAs initially participating as a baseline.

(b) Prior experience, capacity, and stakeholder support. (1) The extent and depth of prior experience that the SEA, including each SEA in a consortium, and its LEAs have in developing and implementing the components of the innovative assessment system. An SEA may also describe the prior experience of any external partners that will be participating in or supporting its demonstration authority in implementing those components. In evaluating the extent and depth of prior experience, the Secretary considers--

(i) The success and track record of efforts to implement innovative assessments or innovative assessment items aligned to the challenging State academic standards under section 1111(b)(1) of the Act in LEAs planning to participate; and

(ii) The SEA's or LEA's development or use of--

(A) Effective supports and appropriate accommodations consistent with section 1111(b)(2) of the Act for administering innovative assessments to all students, including English learners and children with disabilities, which must include professional development for school staff on providing such accommodations;

(B) Effective and high-quality supports for school staff to implement innovative assessments and innovative assessment items, including professional development; and

(C) Standardized and calibrated scoring rubrics for innovative assessments, with documented evidence of the validity, reliability, and comparability of determinations of student

mastery or proficiency on the assessments.

(2) The extent and depth of SEA, including each SEA in a consortium, and LEA capacity to implement the innovative assessment system considering the availability of technological infrastructure; State and local laws; dedicated and sufficient staff, expertise, and resources; and other relevant factors. An SEA or consortium may also describe how it plans to enhance its capacity by collaborating with external partners that will be participating in or supporting its demonstration authority. In evaluating the extent and depth of capacity, the Secretary considers--

(i) The SEA's analysis of how capacity influenced the success of prior efforts to develop and implement innovative assessments or innovative assessment items; and

(ii) The strategies the SEA is using, or will use, to mitigate risks, including those identified in its analysis, and support successful implementation of the innovative assessment.

(3) The extent and depth of State and local support for the application for demonstration authority in each SEA, including each SEA in a consortium, as demonstrated by signatures from the following:

(i) Superintendents (or equivalent) of LEAs, including LEAs participating in the first year of the demonstration authority period.

(ii) Presidents of local school boards (or equivalent, where applicable), including within LEAs participating in the first year of the demonstration authority.

(iii) Local teacher organizations (including labor organizations, where applicable), including within LEAs participating in the first year of the demonstration authority.

(iv) Other affected stakeholders, such as parent organizations, civil rights organizations, and business organizations.

(c) Timeline and budget. The quality of the SEA's or consortium's timeline and budget for implementing innovative assessment demonstration authority. In determining the quality of the timeline and budget, the Secretary considers--

(1) The extent to which the timeline reasonably demonstrates that each SEA will implement the system statewide by the end of the requested demonstration authority period, including a description of--

(i) The activities to occur in each year of the requested demonstration authority period;

(ii) The parties responsible for each activity; and

(iii) If applicable, how a consortium's member SEAs will implement activities at different paces and how the consortium will implement interdependent activities, so long as each SEA begins using the innovative assessment in the same school year consistent with §200.76(b)(1); and

(2) The adequacy of the project budget for the duration of the requested demonstration authority period, including Federal, State, local, and non-public sources of funds to support and

sustain, as applicable, the activities in the timeline under paragraph (c)(1) of this section, including--

(i) How the budget will be sufficient to meet the expected costs at each phase of the SEA's planned expansion of its innovative assessment system; and

(ii) The degree to which funding in the project budget is contingent upon future appropriations action at the State or local level or additional commitments from non-public sources of funds.

(d) Supports for educators and students. The quality of the supports that the SEA or consortium will provide to educators and students to enable successful implementation of the innovative assessment system and improve instruction and student outcomes. In determining the quality of supports, the Secretary considers--

(1) The extent to which the SEA or consortium has developed, provided, and will continue to provide training to LEA and school staff, including teachers, principals, and other school leaders, that will familiarize them with the innovative assessment system;

(2) The strategies the SEA or consortium has developed and will use to familiarize students with the innovative assessment system;

(3) The strategies the SEA will use to ensure that all students and each subgroup of students under section 1111(c)(2) of the Act in participating schools receive the support, including appropriate accommodations consistent with section 1111(b)(2) of the Act, needed to meet the challenging State academic standards under section 1111(b)(1) of the Act; and

(4) If the system includes assessment items that are developed or scored by teachers or other school staff, the strategies (e.g., templates, prototypes, test blueprints, scoring tools, rubrics, audit plans) the SEA or consortium has developed, or plans to develop, to validly and reliably score such items, including how the strategies engage and support teachers and other staff in developing and scoring high-quality assessments and how the SEA will use effective professional development to aid in these efforts, to help ensure unbiased, objective scoring of assessment items.

(e) Evaluation and continuous improvement. The quality of the SEA's or consortium's plan to annually evaluate its implementation of innovative assessment demonstration authority. In determining the quality of the evaluation, the Secretary considers--

(1) The strength of the proposed evaluation of the innovative assessment system included in the application, including whether the evaluation will be conducted by an independent, experienced third party, and the likelihood that the evaluation will sufficiently determine the system's validity, reliability, and comparability to the statewide assessment system consistent with the requirements of §200.77(b)(4) and (9); and

(2) The SEA's or consortium's plan for continuous improvement of the innovative assessment system, including its process for--

(i) Using data, feedback, evaluation results, and other information from participating

LEAs and schools to make changes to improve the quality of the innovative assessment; and

(ii) Evaluating and monitoring implementation of the innovative assessment system in participating LEAs and schools annually.

(Authority: 20 U.S.C. 6364; 20 U.S.C. 1221e-3)

6. Section 200.79 is revised to read as follows:

§200.79 Transition to statewide use.

(a)(1) After an SEA has scaled its innovative assessment system to operate statewide in all schools and LEAs in the State, the SEA must submit evidence for peer review under section 1111(a)(4) of the Act to determine whether the system may be used for purposes of both academic assessments and the State accountability system under section 1111(b)(2) and (c) of the Act.

(2) An SEA may only use the innovative assessment system for the purposes described in paragraph (a)(1) of this section if the Secretary determines that the system is of high quality consistent with paragraph (b) of this section.

(b) Through the peer review process of State assessments and accountability systems under section 1111(a)(4) of the Act, the Secretary determines that the innovative assessment system is of high quality if--

(1) An innovative assessment developed in any grade or subject under section 1111(b)(2)(B)(v) of the Act--

(i) Meets all of the requirements under section 1111(b)(2) of the Act and §200.77(b) and (c);

(ii) Provides coherent and timely information about student achievement based on the challenging State academic standards under section 1111(b)(1) of the Act;

(iii) Includes objective measurements of academic achievement, knowledge, and skills; and

(iv) Is valid, reliable, and consistent with relevant, nationally recognized professional and technical standards;

(2) The SEA provides satisfactory evidence that it has examined the statistical relationship between student performance on the innovative assessment in each subject area and student performance on other measures of success, including the measures used for each relevant grade-span within the remaining indicators (i.e., indicators besides Academic Achievement) in the statewide accountability system under section 1111(c)(4)(B) of the Act, and how the inclusion of the innovative assessment in its Academic Achievement indicator affects the annual meaningful differentiation of schools;

(3) The SEA has solicited information, consistent with the requirements under §200.77(d)(3)(iv), and taken into account feedback from teachers, principals, other school

leaders, parents, and other stakeholders under §200.77(a)(2)(i)-(v) about their satisfaction with the innovative assessment system; and

(4) The SEA has demonstrated that the same innovative assessment system was used to measure--

(i) The achievement of all students and each subgroup of students under section 1111(c)(2) of the Act, and that appropriate accommodations were provided consistent with section 1111(b)(2) of the Act; and

(ii) For purposes of the State accountability system consistent with section 1111(c)(4)(E) of the Act, progress on the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act of at least 95 percent of all students, and 95 percent of students in each subgroup of students under section 1111(c)(2) of the Act.

(c) With respect to the evidence submitted to the Secretary to make the determination described in paragraph (b)(2) of this section, the baseline year for any evaluation is the first year, as applicable, that each LEA in the State administered the innovative assessment system.

(d) In the case of a consortium of SEAs, evidence may be submitted for the consortium as a whole so long as the evidence demonstrates how each member SEA meets each requirement of paragraph (b) of this section applicable to an SEA.

(Authority: 20 U.S.C. 6311(a); 20 U.S.C. 6364; 20 U.S.C. 1221e-3)

7. Section 200.80 is revised to read as follows:

§200.80 Extension, waivers, and withdrawal of authority.

(a) Extension. (1) The Secretary may extend an SEA's demonstration authority period for no more than two years if the SEA submits to the Secretary--

(i) Evidence that its innovative assessment system continues to meet the requirements under §200.77 and the SEA continues to implement the plan described in its application in response to the selection criteria in §200.78 in all participating schools and LEAs;

(ii) A high-quality plan, including input from stakeholders under §200.77(a)(2)(i)-(v), for transitioning to statewide use of the innovative assessment system by the end of the extension period; and

(iii) A demonstration that the SEA and all LEAs that are not yet fully implementing the innovative assessment system have sufficient capacity to support use of the system statewide by the end of the extension period.

(2) In the case of a consortium of SEAs, the Secretary may extend the demonstration authority period for the consortium as a whole or for an individual member SEA.

(b) Withdrawal of demonstration authority. (1) The Secretary may withdraw the innovative assessment demonstration authority provided to an SEA, including an individual SEA member of a consortium, if at any time during the approved demonstration authority period or

extension period, the Secretary requests, and the SEA does not present in a timely manner--

(i) A high-quality plan, including input from stakeholders under §200.77(a)(2)(i)-(v), to transition to full statewide use of the innovative assessment system by the end of its approved demonstration authority period or extension period, as applicable; or

(ii) Evidence that--

(A) The innovative assessment system meets all requirements under §200.77, including a demonstration that the innovative assessment system has met the requirements under §200.77(b);

(B) The SEA continues to implement the plan described in its application in response to the selection criteria in §200.78;

(C) The innovative assessment system includes and is used to assess all students attending schools participating in the demonstration authority, consistent with the requirements under section 1111(b)(2) of the Act to provide for participation in State assessments, including among each subgroup of students as defined in section 1111(c)(2) of the Act, and for appropriate accommodations;

(D) The innovative assessment system provides an unbiased, rational, and consistent determination of progress toward the State's long-term goals and measurements of interim progress under section 1111(c)(4)(A) of the Act for all students and subgroups of students under section 1111(c)(2) of the Act and a comparable measure of student performance on the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act for participating schools relative to schools that are not participating; or

(E) The innovative assessment system demonstrates comparability to the statewide assessments under section 1111(b)(2) of the Act in content coverage, difficulty, and quality.

(2)(i) In the case of a consortium of SEAs, the Secretary may withdraw innovative assessment demonstration authority for the consortium as a whole at any time during its demonstration authority period or extension period if the Secretary requests, and no member of the consortium provides, the information under paragraph (b)(1)(i) or (ii) of this section.

(ii) If innovative assessment demonstration authority for one or more SEAs in a consortium is withdrawn, the consortium may continue to implement the authority if it can demonstrate, in an amended application to the Secretary that, as a group, the remaining SEAs continue to meet all requirements and selection criteria in §§200.77 and 200.78.

(c) Waiver authority. (1) At the end of the extension period, an SEA that is not yet approved consistent with §200.79 to implement its innovative assessment system statewide may request a waiver from the Secretary consistent with section 8401 of the Act to delay the withdrawal of authority under paragraph (b) of this section for the purpose of providing the SEA with the time necessary to receive approval to transition to use of the innovative assessment system statewide under §200.79(b).

(2) The Secretary may grant to an SEA a one-year waiver to continue innovative assessment demonstration authority, if the SEA submits, in its request under paragraph (c)(1) of

this section, evidence satisfactory to the Secretary that it--

(i) Has met all of the requirements under paragraph (b)(1) of this section and of §§200.77 and 200.78; and

(ii) Has a high-quality plan, including input from stakeholders under §200.77(a)(2)(i)-(v), for transition to statewide use of the innovative assessment system, including peer review consistent with §200.79, in a reasonable period of time.

(3) In the case of a consortium of SEAs, the Secretary may grant a one-year waiver consistent with paragraph (c)(1) of this section for the consortium as a whole or for individual member SEAs, as necessary.

(d) Return to the statewide assessment system. If the Secretary withdraws innovative assessment demonstration authority consistent with paragraph (b) of this section, or if an SEA voluntarily terminates use of its innovative assessment system prior to the end of its demonstration authority, extension, or waiver period under paragraph (c) of this section, as applicable, the SEA must--

(1) Return to using, in all LEAs and schools in the State, a statewide assessment that meets the requirements of section 1111(b)(2) of the Act; and

(2) Provide timely notice to all participating LEAs and schools of the withdrawal of authority and the SEA's plan for transition back to use of a statewide assessment.

(Authority: 20 U.S.C. 6364; 20 U.S.C. 1221e-3)