

DEPARTMENT OF EDUCATION**34 CFR Part 200**

RIN 1810—AA89

Title I—Helping Disadvantaged Children Meet High Standards**AGENCY:** Department of Education.**ACTION:** Notice of Proposed Rulemaking.

SUMMARY: The U. S. Secretary of Education (Secretary) proposes to amend the regulations implementing programs under Title I of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act of 1994. These proposed amendments would provide additional flexibility to local educational agencies (LEAs) operating Title I programs.

DATES: Written comments must be received on or before June 1, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, room 4400, Washington, DC 20202-6132.

Comments may also be sent through the Internet: comments Title I_LEA@ed.gov.

FOR FURTHER INFORMATION CONTACT:

Wendy Jo New, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW., Portals Building, room 4400, Washington, DC 20202-6132. Telephone: (202)260-0982. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On July 3, 1995, the Secretary published final regulations under Title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act. The following are the specific provisions for which the Secretary is proposing regulatory amendments.

Schoolwide Programs and the Individuals With Disabilities Education Act

Under § 1114 of Title I, Title I schoolwide program schools may combine funds from most other Federal education programs in their schoolwide programs. If they do, the schools are exempt from most of the statutory and regulatory provisions of these programs as long as they meet the intent and purposes of the programs. Section 1114 specifically prohibits an exemption for programs under the Individuals with Disabilities Education Act (IDEA). The recent reauthorization of the IDEA, however, provides additional flexibility regarding IDEA funds. It allows a percentage of the Part B IDEA funds received by an LEA to be combined with other Federal, State, and local education funds to carry out any activities in a schoolwide program. However, it does not exempt a schoolwide program school from meeting the other requirements of IDEA. In other words, a schoolwide program school combining IDEA funds must comply with all other requirements of IDEA to the same extent it would if it did not combine IDEA funds in its schoolwide program. In addition, LEAs and SEAs are not relieved of their obligations under IDEA to ensure that children with disabilities in schoolwide program schools have all of the rights they would have if they were in a non-schoolwide school.

No-wide Variance

Under prior legislation and regulations, LEAs had the discretion, in selecting school attendance areas or schools to receive Chapter 1 (Title I's predecessor) funding, to designate as eligible and serve all attendance areas and schools within a grade span grouping or in the entire LEA if all attendance areas and schools fell within a range that was no more than 5 percentage points above and 5 percentage points below the grade span or LEA poverty average. This option, referred to as the "no-wide variance" provision, recognized that in LEAs with a uniform distribution of children from low-income families, making a selection of only those areas or schools above the districtwide average of poverty has a less meaningful distinction than in other LEAs. The Title I statute does not contain this option. However, upon reflection, the Secretary has decided to propose reinstituting this flexibility through regulations because it makes little educational sense to differentiate among areas or schools that fall within a close span of poverty. Therefore, the Secretary proposes to amend § 200.28 to

include a "no-wide variance" provision. Under the proposed regulations, an LEA may designate as eligible and serve all areas and schools within a grade span or the entire LEA if the poverty rates of all areas and schools do not vary more than 10 percentage points.

Alteration or Renovation

Section 76.533 of the Education Department General Administrative Regulations prohibits a State or subgrantee from using its grant for construction or acquisition of real property unless specifically permitted by the authorizing statute or implementing regulations for the program. Although construction and acquisition of real property were previously authorized by statute under Chapter 1 of Title I of the ESEA, they are not specifically authorized now, and thus are prohibited under § 76.533. Yet, the Secretary has been made aware of situations where the prohibition against construction, which was defined under previous law to include alteration and remodeling of real property, has constrained LEAs from providing cost effective Title I services. For example, an LEA was offered a building to house a Title I preschool program because existing facilities were inadequate. Because of the renovation necessary to make the donated building meet the architectural guidelines for serving young children and the lack of local funding to make such renovations, the LEA could not accept the donation. A similar situation occurred in another LEA that was donated a building for a Title I parent resource center. The Even Start Family Literacy Program has experienced similar situations, where donated facilities did not meet architectural guidelines for serving young children. The Secretary is proposing to allow, through regulations, the authority to alter or remodel real property if such alteration or remodeling is reasonable and necessary to carry out a Title I program.

Exclusion From Supplement, Not Supplant and Comparability Determinations

The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134) amended section 1120A of Title I to allow a State or LEA to exclude supplemental State and local funds that are expended in any school attendance area or school from both supplement, not supplant and comparability determinations under Parts A and C, as long as the supplemental State and local expenditures are for programs that meet the intent and purposes of Part A.

Section 200.63(c)(1) of these proposed regulations would implement this provision and clarify the characteristics of State and local programs that would enable them to meet the intent and purposes of Part A.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential benefits associated with the proposed regulations are clear. The proposed regulations would provide additional flexibility for SEAs and LEAs to implement their Title I programs. Moreover, the potential costs associated with these proposed regulations would be minimal; they would result from specific statutory requirements or have been determined by the Secretary to be necessary for administering Title I programs effectively and efficiently.

There are no additional burdens specifically associated with information collection requirements that were addressed in the Title I regulations published on July 3, 1995. The Secretary has also determined that this regulatory action does not interfere unduly with State and local governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand.

The Secretary invites comment on how to make these regulations easier to understand, including answers to the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interfere with the clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a

numbered heading; for example "\$200.68 Schoolwide program requirements.") (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FOB-10), Washington, DC 20202-2241.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

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.

The small entities that would be affected by these proposed regulations are small LEAs, institutions of higher education, and public or nonprofit private agencies receiving Federal funds under the Title I programs. The proposed regulations would not have a significant economic impact on the small entities affected because the proposed regulations would not impose excessive regulatory burden or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4400, Portals Building, 1250 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations.

An individual with a disability who wants to schedule an appointment for this type of aid may call (202)205-8113 or (202)260-9895. An individual who uses a TDD may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirement of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

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List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of individuals with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs—education, Indians—education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: March 24, 1998.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Improving Programs Operated by Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Programs; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.144, Migrant Education Coordination Program; 84.213, Even Start Family Literacy Program)

The Secretary proposes to amend part 200 of Title 34 of the Code of Federal Regulations as follows:

**PART 200—TITLE I—HELPING
DISADVANTAGED CHILDREN MEET
HIGH STANDARDS**

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

Authority: 20 U.S.C. 6301–6514, unless otherwise noted.

3. In § 200.8, paragraph (c)(1) is revised and paragraph (c)(3)(ii)(B)(3) is added to read as follows:

§ 200.8 Schoolwide program requirements.

* * * * *

(c) Availability of other Federal funds.

(1) In addition to funds under this subpart, a school may use in its schoolwide program Federal funds under any program administered by the Secretary that is included in the most recent notice published by the Secretary in the **Federal Register** or is addressed in paragraph (c)(3)(ii)(B)(3) of this section.

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(3) * * *

(ii) * * *

(B) * * *

(3) *Special Education.* (i) A school may combine funds received under Part B of the Individuals with Disabilities Education Act (IDEA) in a schoolwide program, except that the amount so used in any schoolwide program may not exceed the amount received by the LEA under Part B of IDEA for that fiscal year; divided by the number of children with disabilities in the jurisdiction of the LEA; and multiplied by the number of children with disabilities participating in the schoolwide program.

(ii) A school may also combine funds received under section 8003(d) of the

Act (Impact Aid funds for children with disabilities) in a schoolwide program.

(iii) A school that combines funds under Part B of IDEA or section 8003(d) of the Act in its schoolwide program may use those funds for any activities under its schoolwide program plan but shall comply with all other requirements of Part B of IDEA to the same extent it would if it did not combine funds under Part B of IDEA or section 8003(d) of the Act in its schoolwide program.

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4. Section 200.28 is amended by removing paragraph (a)(2)(iii) and adding a new paragraph (a)(4) to read as follows:

§ 200.28 Allocation of funds to school attendance areas and schools.

(a) * * *

(4) An LEA may designate as eligible and serve all school attendance areas or schools within a grade span grouping or within the entire LEA if within the grade span or LEA, as applicable, the variation between the percentage of children from low-income families in the attendance area or school with the highest concentration of such children and the percentage of children from low-income families in the attendance area or school with the lowest concentration of such children does not exceed 10 percentage points.

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5. Section 200.62 is added to read as follows.

§ 200.62 Use of funds for construction of real property.

(a) Title I funds may be used to construct real property if reasonable and necessary to carry out a Title I program.

(b) The term *construction* means the alteration or renovation of a building, structure, or facility, including—

(1) The concurrent installation of equipment; and

(2) The complete or partial replacement of an existing facility, but only if such replacement is less expensive and more cost-effective than alteration, renovation, or repair of the facility.

(Authority: 20 U.S.C. 6511(a))

6. Section 200.63 is revised to read as follows:

§ 200.63 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the Act, a grantee or subgrantee under parts A or C of Title I may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is not less than 50 percent;

(ii) Is designed to upgrade the entire educational program in the school to support students in their achievement toward meeting the State's challenging student performance standards;

(iii) Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student performance standards; and

(iv) Uses the State's system of assessment to review the effectiveness of the program; or

(2)(i) Serves only children who are failing, or most at risk of failing, to meet the State's challenging student performance standards;

(ii) Provides supplementary services designed to meet the special educational needs of the children who are participating to support their achievement toward meeting the State's student performance standards that all children are expected to meet; and

(iii) Uses the State's system of assessment to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under sections 1113(b)(1)(C) and 1113(c)(2)(B) of the Act.

(Authority: 20 U.S.C. 6322(d))

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