DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA89

Title I—Helping Disadvantaged Children Meet High Standards

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The U.S. Secretary of Education (Secretary) amends the regulations implementing programs under Title I of the Elementary and Secondary Education Act of 1965. These amendments update the regulations to reflect subsequent statutory changes that affect Title I programs and delete an inapplicable provision.

EFFECTIVE DATE: These regulations take effect on November 12, 1998.

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 20202–6140. Telephone: (202) 260–0982. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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SUPPLEMENTARY INFORMATION: On March 31, 1998, the Secretary published in the **Federal Register** (63 FR 34800) a notice of proposed rulemaking (NPRM) under Title I. The preamble to the NPRM included a discussion of the major changes proposed in that document to update the Title I regulations to reflect some recent statutory changes and to increase program flexibility in order to improve services for students. These proposed changes included the following:

- Amending § 200.8 of the Title I regulations to allow funds received by an LEA under Part B of the Individuals with Disabilities Education Act (IDEA) to be combined with other Federal, State, and local funds to carry out any activities in a schoolwide program.
- Amending § 200.28 of the Title I regulations to include a ''no-wide-variance'' provision to allow an LEA to designate as eligible and serve all school attendance 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.
- Allowing the use of Title I funds for construction of real property if such construction is reasonable and necessary to carry out a Title I program.
- Amending § 200.63 of the final regulations to implement a statutory change that allows 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 of Title I, as long as the supplemental State and local expenditures are for programs that meet the intent and purposes of Part A.

These final regulations reflect two significant changes from the NPRM. First, the Secretary has decided not to include the ''no-wide-variance'' provision in the final regulations. Second, the Secretary has decided not to include the provision authorizing construction of real property in the final regulations. The reasons for these decisions are fully explained in the appendix to these regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 11 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Major issues are grouped according to subject. Technical and other minor changes—and any suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12866

These final 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 costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1995

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

Assessment of Educational Impact

Based on the response to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

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: October 6, 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 Program; 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 amends Title 34 of the Code of Federal Regulations by revising Part 200 as follows:

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

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

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

2. 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 schoolwide program.

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(**Authority:** 20 U.S.C. 6314, 1413(a)(2)(D), 6396(b)(3), 7703(d), 7815(c))

3. Section 200.28 is amended by removing paragraph (a)(2)(iii).

4. 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 either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 50 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging student performance standards that all children are expected to meet;

(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, if final, or the transitional assessment system 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 in the program 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, if final, or the transitional assessment system 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))

Appendix—Analysis of Comments and Changes

(**Note:** This appendix will not appear in the Code of Federal Regulations)

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Procedures for the Within-District Allocation of LEA Program Funds

Section 200.28 Allocation of Funds to School Attendance Areas and Schools

Comment: Several commenters objected to the proposed regulation to reinstitute the previously statutorily authorized no-wide-variance provision. They argued that the Secretary does not have the legal authority to regulate on this issue because Congress omitted this discretionary option from the legislation. The commenters noted, however, that the Secretary can achieve essentially the same result because he has the authority to grant waivers on a case-by-case basis to districts that can demonstrate that exercising the no-wide variance option would overcome a barrier to improving school performance. A few commenters opposed the proposed no-wide-variance provision because they erroneously believed it would divert resources from higher-poverty schools outside the 10 percent band of poverty. In fact, however, this provision would only have applied to those districts with schools that all fall within a 10 percent band of poverty. One commenter supported the proposed regulation that would reinstitute the no-wide-variance option.

Discussion: The no-wide-variance provision, authorized first by regulation and then under prior legislation, recognized that, in LEAs with a uniform distribution of children from low-income families, selecting only those areas or schools above the districtwide poverty average draws insignificant distinctions without furthering the goal of targeting Title I funds in the highest poverty schools. Nonetheless, in its 1994 reauthorization of Title I, Congress did not include the no-wide-variance provision in its efforts to improve targeting of Title I funds. As a result, a number of LEAs have requested waivers of the school selection provisions in section 1113 of Title I to allow them to serve all their schools if those schools have a low variation in their poverty percentages. Because all of these waiver requests have been granted, the Secretary had proposed to regulate on this issue to make it universally applicable. However, as a result of the negative comments we received, the Secretary reconsidered and has decided not to regulate on this issue. Rather, the Secretary will continue to consider no-wide-variance questions on a case-by-case basis through the waiver process and may reconsider this issue during the reauthorization of ESEA.

Changes: The final regulations do not include the no-wide-variance provision.

General Provisions

Section 200.62 Use of Funds for Construction of Real Property

Comment: Several commenters supported the proposed regulation authorizing the use of Title I funds for construction of real property if reasonable and necessary to carry out a Title I activity. They suggested, however, restricting the cost of any such construction to no more than 5 percent of an LEA's Title I allocation and suggested that specific criteria be included to ensure construction would be linked to a needs assessment and school improvement plan. Others suggested limiting construction and alterations to preschool activities and parent involvement centers. One commenter suggested that a Title I program that uses Title I funds for renovation would need to operate for a given number of years or Title I would have to be paid back the cost of the renovation. Several commenters, however, objected to using Title I funds for construction at the expense of reducing direct academic services to children. Some commenters argued that the Secretary does not have the authority to regulate on construction absent specific statutory authority.

Discussion: The statute included express authority to use Chapter 1 (now Title I) funds for construction prior to 1994. However, the reauthorization of Title I did not include such authority. Section 76.533 of the Education Department General Administrative Regulations (EDGAR) prohibits a State or subgrantee from using Federal education funds for construction or acquisition of real property unless specifically permitted by the authorizing statute or implementing regulations for the program. Based on actual instances in which the prohibition of construction with Title I funds was an obstacle to LEAs who could have offered enhanced Title I services, the Secretary had proposed to allow, through regulations, the use of Title I funds for construction and renovation of real property if reasonable and necessary to carry out Title I purposes. Authorizing construction by regulation is clearly permitted under § 76.533 of EDGAR. However, the number of comments opposing the use of Title I funds for construction were compelling, and the Secretary has reconsidered regulating on this issue at this time. The Secretary may reconsider this issue during the upcoming reauthorization of the ESEA.

Changes: The final regulations do not include a provision authorizing construction of real property with Title I funds.

Section 200.63 Exclusion from Supplement, not Supplant and Comparability Determinations

Comment: One commenter suggested modifying the regulation to clarify that it applies to programs using either a State's assessment system, if final, or its transitional assessment system.

Discussion: The Secretary agrees that this clarification would be helpful.

Changes: The Secretary has revised § 200.63(b)(1)(iv) and(2)(iii) to include the recommended language.

Comment: One commenter suggested that the regulations clarify what is meant by meeting the intent and purposes of Title I. The commenter further recommended that the provisions under Chapter 1, which required the Secretary or a State, respectively, to approve the exclusion of State and local compensatory funds, be included in these regulations.

Discussion: The Omnibus Consolidated Rescissions and Appropriations Act of 1996 permits the exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations if those funds are expended in any school for programs that meet the ''intent and purposes of Title I.'' Section 200.63(b) of the final regulations specifies those characteristics a program must have to meet the intent and purposes of Title I. The Secretary believes that these provisions are sufficient to ensure that programs subject to the exclusion meet the intent and purposes of Title I. Neither the ESEA nor the amendment made by the Omnibus Consolidated Rescissions and Appropriations Act of 1996 requires approval by the Secretary or a State, respectively, and, therefore, the Secretary does not believe it is appropriate to add the suggested provisions to these regulations.

Changes: None.

Comment: One commenter recommended that the regulations permit State and local supplemental funds to be excluded from the supplement, not supplant and comparability determinations in a schoolwide-like program even if the school does not have at least 50% poverty.

Discussion: The law permits the exclusion of State and local supplemental funds from supplement, not supplant and comparability determinations if those funds are used for programs that meet the intent and purposes of Title I. Given that the authority in Title I permits only those schools with at least 50% poverty to use Title I funds to conduct schoolwide programs, the Secretary believes that poverty threshold should also govern schools conducting programs subject to the exclusions in § 200.63.

Changes: None.

[FR Doc. 98–27290 Filed 10–9–98; 8:45 am]

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