Statewide Educational Accountability Systems Under the NCLB Act—A Report on 2007 Amendments to State Plans

A Summary of State Requests in 2006-07 for Amendments to Their Educational Accountability Plans Under the No Child Left Behind Act of 2001 (NCLB)

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COUNCIL OF CHIEF STATE SCHOOL OFFICERS

The Council of Chief State School Officers (CCSSO) is a nonpartisan, nationwide, nonprofit organization of public officials who head departments of elementary and secondary education in the states, the District of Columbia, the Department of Defense Education Activity, and five U.S. extra-state jurisdictions. CCSSO provides leadership, advocacy, and technical assistance on major educational issues. The Council seeks member consensus on major educational issues and expresses their views to civic and professional organizations, federal agencies, Congress, and the public.

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A report commissioned by the CCSSO Accountability Systems and Reporting State Collaborative – SCASS

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Executive Summary

More than five years into the implementation of the No Child Left Behind Act of 2001 (NCLB), the fact that almost all States again requested amendments to their educational accountability plans to meet the requirements of NCLB (workbooks) this year was quite surprising. And, the total number of requests across the States was substantial: almost 200, ranging from one to ten or more per State. Every State requesting an amendment has received a decision letter this year (as evidenced by U.S. Department of Education’s (ED) postings of decision letters to its web site, http://www.ed.gov/admins/lead/account/letters/index.html), a significant change over past years.

Thirty-one States submitted requests related to either continuation or initiation of flexibility to use “modified” student academic achievement standards in AYP decisions for certain students with disabilities. Fourteen States sought amendments to the manner in which they define and calculate graduation rates for AYP decisions. The accountability workbook amendment requests also reflected substantial continuing activity related to changes in Statewide assessment systems and the manner in which AYP applications are made.

Below, we present a summary of the accountability workbook amendments requested in 2007. ED has consistently denied previous requests in a few of the areas described. Many of the requests simply involve adoption of amendments previously approved for other States; some of which ED did not approve in 2006. We did not include in this summary, or elsewhere, the many minor requests that States submitted this year to simply update their workbooks.

Appendix B includes an updated timeline of the significant events related to implementation of NCLB since its enactment in January 2002.

States’ requested amendments for 2006-07 AYP calculations included:

**Standards and Assessments**

**Changes to Assessment Systems**

- Revise standards setting processes: **Kentucky**
- Implement new high school assessment in fall of 2007, transitioning at the same time from spring to fall testing (make 2006-07 AYP decisions at this level based solely on graduation rate) (see also graduation rate): **New Hampshire**
- Implement new or revised alternate assessments or procedures for significantly cognitively disabled students or make other changes related to the assessment of this student group (see also inclusion): **Kentucky, Oregon, South Carolina, Texas,** and **Virginia**
- Discontinue use of portfolio assessments or make other changes related to LEP students (see also inclusion): **Arizona, New York, Texas,** and **Wisconsin**
- Clarify that assessments are administered annually in grades 3-8 and high school: **Pennsylvania**

**Use of ACT, SAT, AP, or IB Exams as High School Accountability Assessments**

- Extend to all students the Advanced Placement/International Baccalaureate substitute assessment option granted previously for a limited number of students: **Maryland** and **Virginia**

**Banking of Test Results**

- Bank high school assessment results: **Kansas, Oregon,** and **Wyoming**
Recalculation of AYP Using “Best Scores” or Results from Subsequent Test Administrations

- Use “best score” for AYP calculations when students re-take State tests: Arizona, Michigan, and Pennsylvania

Miscellaneous Amendments

- Change names of proficiency levels: Kansas
- Base AYP decisions on all grades 3-8 (not one grade in each of the 3-5 and 6-9 spans): North Dakota
- Change the grade at which science assessments will be administered for NCLB purposes: North Carolina
- Substitute different assessment requirements for “innovative schools:” North Carolina
- Use a table to convert the scores of students tested with a calculator, etc., if the State determines that accommodations provided invalidate the results: Arizona
- Revise the manner in which reading and writing scores are combined for AYP decisions (see also inclusion): Wyoming

AYP Model

- Clarify language regarding many elements in the State’s accountability workbook: New Jersey, Oregon, and South Carolina

Adequate Yearly Progress (AYP) Application

- Remove students displaced by Hurricanes Katrina and Rita as a subgroup for AYP calculations: Tennessee and Texas
- Make AYP determinations for schools with the highest grade of 1 or 2 based on grade 3 results: New Hampshire
- Extend small school review processes or otherwise amend the manner in which AYP determinations are made for small schools: Montana
- Aggregate multiple years of data to determine AYP for schools not meeting minimum n requirements: New Hampshire, South Carolina, and Tennessee
- Modify the manner in which new schools1 and reorganized schools or districts are defined and changes in the attribution of scores for students served in alternate settings: Iowa, Massachusetts, Michigan, North Carolina, South Carolina (2), and Wyoming
- Continue use of equi-percentile adjustments for all AYP determinations while transitioning to new content and achievement standards: Georgia and North Carolina
- Modify full academic year definition (FAY): North Dakota
- Base school and district identifications for improvement on missing AYP targets in the same content area by the same student group for two consecutive school years: Michigan, Oklahoma, Pennsylvania, Utah, and Washington
- Add missing other academic indicator to school district AYP measures: Oklahoma (2), Texas, and Wisconsin

Adequate Yearly Progress (AYP) Indicators

- Use indexing for AYP determinations: California, New Hampshire, Washington, and Wyoming

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1 In non-regulatory guidance on LEA and School Improvement revised and issued on July 21, 2006, ED directed at G-9, pp. 28-29, “If a State has operational rules for determining AYP for new schools that differ from those applied to other schools, the State must amend its accountability plan to provide its definition of a new school and to describe how it determines AYP for new schools including whether and under what circumstances a restructured school can be considered a new school.” However, this document is non-regulatory guidance, which does not require action by a State.
• Modify the manner in which participation rates are calculated: Mississippi, Oregon, and Wyoming
• Modify Other Academic Indicators: California, New York, Oregon, and Virginia
• Modify graduation rate targets, how graduation rates are calculated, use an interim graduation rate, or include students graduating past their scheduled graduation time: Arizona, Georgia, Idaho, Louisiana, Maryland, Massachusetts, Michigan, New Hampshire, North Carolina, Oklahoma, South Carolina (2), Tennessee (2), Virginia, and Wyoming
• Permit the State to use a growth model in AYP determinations or use confidence intervals in growth model AYP determinations: Arkansas, Colorado, Connecticut, Delaware, Hawai‘i, Louisiana, North Carolina, Pennsylvania, and Tennessee (2)

Annual Measurable Objectives and Intermediate Goals
• Modify starting points, AMOs and IGs: Kansas (2), Montana (2), New York (2), North Carolina, and South Carolina

Strategies to Enhance Reliability
• Modify the manner in which uniform averaging is used or discontinue use of two-year averaging in AYP calculations: Kentucky, Massachusetts, and Nebraska
• Modify minimum n’s: Minnesota and Montana
• Use SEMs in AYP calculations related to end-of-grade and end-of-course assessments: North Carolina

Safe Harbor
• Modify the manner in which safe harbor is calculated: Colorado, Nebraska, New Hampshire, Oregon, South Carolina, and Wyoming

Inclusion of All Students

Inclusion of Students with Disabilities and AYP
• One-year extension of the flexibility to use “modified” achievement standards for certain SWDs:
  o OPTION TWO: Kansas, Louisiana, North Carolina, North Dakota, and Oklahoma
  o OPTION THREE: Colorado, Maryland, and Massachusetts
• Include exited SWDs in that student group when making AYP determinations: California, Idaho, Iowa, Pennsylvania, and Utah
• Modify the definition of the SWDs student group: Georgia
• Modify or clarify the manner in which the achievement of SWDs is included in AYP determinations: Arkansas, Hawai‘i, Louisiana, Montana, Wisconsin, and Wyoming
• Include students with significant cognitive disabilities who “meet” or “exceed” proficient on alternate assessments provided the 1% cap is not exceeded or make related changes: Hawai‘i and Virginia
• Count special education diplomas as regular diplomas for AYP purposes: Georgia

Inclusion of English Language Learners in Assessments and AYP
• Delay the time before which LEP students are required to participate in State assessments: Alaska, Connecticut, Michigan, Oregon, Pennsylvania, Virginia, and Washington
• Modify or clarify the manner in which the achievement of LEP students is included in AYP determinations or in English language proficiency measures: Arizona, Arkansas, Massachusetts, Michigan, Nevada, Oregon, Virginia (2), Wisconsin, and Wyoming
• Include exited LEP students in that student group when making AYP determinations and other flexibility options: Arizona, Michigan, Oregon, and South Carolina
• Exclude foreign exchange students in making AYP determinations: South Carolina and Wyoming

AYP Consequences and Reporting

Consequences Generally
• Permit States to award school improvement funds to districts identified for improvement: Colorado
• Clarify the requirements for an improvement plan and the State’s monitoring of each school and district’s implementation of that plan after identification for improvement: South Dakota

Public School Choice and Supplemental Educational Services
• Reverse the order of public school choice and supplemental educational services (SES) or permit schools identified for improvement to offer both school choice and SES in year one: Colorado, Connecticut, Pennsylvania, Utah, and Virginia
• Apply consequences to the specific student groups not making AYP or allow for differentiated consequences: Connecticut, Pennsylvania, and Utah
• Permit school districts identified for improvement to provide SES to schools in improvement status: Connecticut

Reporting
• Delay the release of school reports due to the implementation of new assessments: Arizona, Kentucky, Michigan, and Oregon
• Revise the manner in which reading and writing scores are combined to create a language arts score (see also standards and assessments): Wyoming

Appeals to Identification for Improvement Determinations
• Clarify the manner in which schools or districts identified for improvement may request the State to review such a finding: Arizona and Wyoming
Chapter 1: Introduction

We have chronicled the approval and amendment process for States’ accountability plans under the No Child Left Behind Act of 2001 (NCLB) since the initial submittal of these plans in January 2003. Last year, three full years after our initial paper, we assumed that 2005-06 school year would be a relatively quiet period for plan amendments. We observed that in the fall of 2005, most States were busy implementing assessments in new grades and undergoing peer review of their standards and assessment systems. Conversations about reauthorization of the Elementary and Secondary Education Act of 19652 had begun. There seemed little need to make other major adjustments in accountability plans. We not only were quite wrong then, we were wrong again this year to assume that there would be little activity outside of continuation of the 2% modified achievement standards option. Both years have turned out to be far busier than we anticipated; not only in terms of the number of States submitting amendments but the range and total number of amendments requested. Between 2003 and 2005, nearly every State submitted at least one request to amend its plan.

Between 2003 and 2005, nearly every State submitted at least one request to amend its plan. While 47 States sought amendments in 2003-04, only about 20 submitted requests in 2004-05. In 2005-06, 47 States submitted formal requests, and 44 did so for 2006-07. There was a significant change in the pattern of review and approvals for 2005-06 amendments—that is a number of requests for changes that had been approved previously for other States were now being denied. The pattern of rules for approval especially changed related to minimum n, and then this year (2006-07) minimum n requirements were codified in regulations issued early 2007.

In 2006, ED made a change in amendments review rules by soliciting separate workbook amendments for States interested in reversing the order of school choice and supplemental educational services (SES) sanctions under NCLB (Spellings, 2006, May 15). Even though several States had already included these as 2005-06 amendments (and others did so this year), the Secretary’s announcement set up a separate application process as well as participation conditions. Five States (Alaska [1 local educational agency or LEA], Delaware [1 LEA], Indiana [3 LEAs], North Carolina [7 LEAs], and Virginia [4 LEAs]) were approved to permit certain school districts to reverse the sanctions. At the same time, the Secretary approved four school districts (Anchorage, AK, Boston, MA, Chicago, IL, and Hillsborough County, FL) identified for improvement to serve as SES providers, previously not allowed. How these districts were chosen and whether there was an application process is unclear. This year, the Department again solicited separate workbook amendments and approved four of the same five States (Delaware opted not to renew its request) and the same four LEAs to continue serving as SES providers although they have been identified as in need of improvement. Of the States approved under this waiver, Alaska added a second LEA, Virginia dropped two and added five new ones, and Indiana dropped one and added one for a total of three participating LEAs. North Carolina continued with its original seven LEAs.

This year we encountered two surprises. The first was the manner in which ED handled States’ amendment requests. The Department began by moving the date for submittal of requests up to February 15, 2007. Then, ED announced that it would include in its decision letters both amendments that were approved and those that were not (often with accompanying rationale). This was in sharp contrast to past years in which responses were not always quick or completely documented in writing; especially denials. As this paper was completed, ED had responded to all 44 State requests. States report that this new policy has helped them to better understand the

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2 NCLB is not a new law: it is simply the most recent reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). The most recent prior reauthorization was known as the Improving America’s Schools Act of 1994. The first major section of ESEA, which includes the federal requirements for standards, assessments, and accountability, is referred to as Title I.
status of their complete sets of amendment requests. We applaud this greater transparency, as well.

The second surprise this year was the attention ED gave to States that were using indices and those that sought to add indexing applications in their AYP calculations. In the case of the former, the Department invited States currently approved to use indexing (see Chapter 2 for more information) to a one-day conference in September 2007 to analyze “the impact of performance indexes on AYP determinations to ensure that they meet accountability” (Briggs, 2007, June 27). Continuing a course we first observed last year, States seeking to add the use of indices this year found themselves in discussions with ED representatives.

Thus, this fifth installment of the Council of Chief State School Officers’ (CCSSO’s) annual review of changes to States’ accountability plans documents a policy path that has become clearer than it had been in previous years. The basic structure of this paper parallels that of its predecessors, but continues to note that previous amendment decisions do not necessarily represent trustworthy precedents.

This paper also comes on the heels of ED’s report that all States have come into compliance with ESEA’s standards, assessments, and accountability requirements (13 years after the passage of the Improving America’s Schools Act of 1994, which set forth the initial requirements, and five years after NCLB updated the ESEA law in 2002). While every State’s accountability system has been fully approved for several years now (and most amended multiple times), not all assessment systems have been, technically, fully approved. As will be detailed below, at least 14 States cannot be considered to have assessment systems that are or are about to be fully approved.

As with the previous four papers, we have based this paper primarily on information provided voluntarily by States to the CCSSO and the subsequent decision letters posted by ED. States submitted various types of information to support this work, including copies of the request documents, emails, and phone conversations. CCSSO and the authors are especially grateful to staff in State Departments of Education (SEAs) who have continued to make available the information essential to our public documentation of the amendment process.

In the remainder of this introductory chapter, the major issues that formed the 2006-07 accountability context are described. States’ amendment requests and ED’s responses to these requests are described in Chapter 2 of this paper. A summary of these decisions is provided in Chapter 3 along with some conclusions and speculations about what may lie ahead.

The 2006-07 Policy Context

Accountability and accountability-related topics maintained their prominent position in the education policy spotlight during the 2006-07 school year. A number of major themes emerged this year; each in its own way seeming to both influence accountability workbook amendments sought by States for 2006-07, and ED’s decisions on these requests. These themes include:

- Escalation of reauthorization proposals
- Additional reports on NCLB effectiveness and implementation

3 CCSSO maintains State Accountability Profiles at http://www.ccsso.org/projects/Accountability_Systems. According to one SEA administrator, “The site provides quick, ‘one-stop shopping,’ when looking for information related to state accountability plans. With capacity and time at a minimum, it is extremely helpful to go to one site where I can easily access the information for all of the States. When considering adjustments and revisions to our state’s accountability plan, I will often visit the site for the most up to date information.”
The discussion of these themes that follows should be considered in light of the continuing, sometimes heated, public and political attention to NCLB as reflected in communications from States, the press, related studies and reports, and papers presented at regional and national conferences; all of which seems to have accelerated over the past two years. Additional detail for many of the studies and reports cited can be found in Appendix C.

**Escalation of Reauthorization Proposals**

At the end of 2007, Congress and the administration had not come to an agreement on key proposals for change and for levels of funding (Education Week, December 19, 2007), it is now possible that reauthorization of ESEA may not happen until 2009. In the past year, the discussion, and debate, intensified with various interested parties asserting their viewpoints and pressing these for the law’s eventual amendment and reauthorization. The major themes cutting across many of the amendments proposals included national academic standards; accountability models that measure students’ growth; testing and achievement targets for special populations, revisions in the sanctions for schools that miss AYP, greater accountability for high schools; levels of funding to support low-performing schools, and attention to teacher quality (Olson & Hoff, 2006). Examples of reauthorization efforts by several organizations are described below.

- **Council of Chief State School Officers**

  CCSSO appointed a diverse task force in 2006 comprised of 19 members to develop a series of recommendations for the ESEA reauthorization. The members, included five chief state school officers, four deputies, four federal liaisons, and six State education agency staff, formulated a series of recommendations focusing on six broad areas: promote innovative models and reinvent peer review, improve accountability determinations, differentiate consequences, improve assessment systems, properly include students with disabilities, properly include English language learners, enhance teacher quality, and strengthen resources. These recommendations were circulated to Members of Congress and their staffs, who also held several meeting with CCSSO members and staff to discuss possible changes to the law.

  Once Members of Congress circulated discussion drafts, one on Title I and a second was on Titles II–XI, the Council submitted comments on both drafts after collecting member feedback through phone calls and written comments. Many of the Council’s recommendations were incorporated into the House discussion draft. CCSSO comments to the Committee focused on advocating a revised ESEA that allows room for innovation and continuous improvement by States, acknowledging there is not one single way to achieve educational excellence. CCSSO members and staff have been meeting with key congressional staff about ways the draft bill can be strengthened and incorporating the innovative models recommended in the revised ESEA.

  In addition, CCSSO has assisted members in testifying before Congress on issues related to the reauthorization, from flexibility in allowing States to achieve the aim of universal proficiency to supporting States in preparing students for college and work in the 21st century.

- **The Commission on No Child Left Behind**

  This private, bipartisan panel was appointed in March 2006, to seek public input and explore possible changes to NCLB. A set of 75 recommendations was presented in February 2007. The 15-member panel was chaired by Tommy Thompson, former H&S Secretary and Wisconsin Governor, and Roy Barnes, former Georgia Governor. The final set of 75 recommendations is

- **Education Commission of the States**  
  ECS has created a single source to track “who’s saying what” regarding NCLB reauthorization proposals. The database can be found online at www.ecs.org.

- **Educational Testing Service (ETS) National Survey**  
  In May, ETS sponsored a national survey of parents and educators (including school board members) to sample American’s opinions on standards, accountability, and flexibility related to the reauthorization of NCLB (Hart Research Associates & The Winston Group, 2007). The principal survey findings included support to reauthorize the law with major changes, support for national standards, and support for increased parental involvement.

- **Fordham Institute Survey of “Washington Insiders”**  
  In December 2006, Fordham Foundation researchers (Loup & Petrilli, 2007) conducted an online survey of “Washington insiders” to solicit opinions related to NCLB’s reauthorization. From the twelve responders, major findings included the expectation that reauthorization would be delayed until 2009, the law will not likely have a major overhaul, the growth model program will likely be expanded, the order of providing public school choice and supplemental educational services are likely to be reversed, and Congress may provide incentives for States to adopt national standards.

### Additional reports on NCLB effectiveness and implementation

For two years, the authors and members of the ASR SCASS project have been tracking the growing number of studies of the effectiveness of NCLB. The results continue to be somewhat mixed in terms of judging the law’s accomplishments and shortcomings but almost all studies conclude that NCLB is in need of changes. Examples of NCLB reports and studies released this year are summarized below.

One NCLB-mandated report was overdue from U.S. Department of Education. The law includes a provision in section 6161 that, beginning with the 2004-05 school year, ED will “conduct a review to determine whether each state has made ‘adequate yearly progress,’ or AYP with respect to each subgroup accounted for under Title I….Further, the law requires the department to evaluate whether each state has met its ‘annual measurable achievement objectives’ (AMAOs) for the attainment of English proficiency by limited English proficient students under Title III” (Hicks, 2007, p. 1).

- **Center on Education Policy (CEP) No Child Left Behind at Five: A Review of Changes to State Accountability Plans and Answering the Question That Matters Most: Has Student Achievement Increased Since No Child Left Behind?**  
  Two reports from the Center on Education Policy (CEP) released this year have examined NCLB. In the No Child Left Behind at Five, CEP authors assert that many changes to accountability plans were related simply to meeting the deadline for implementing tests that fulfilled NCLB requirements by the end of school year 2005-06, setting cut scores and revising targets for AYP. Further, many state changes were adopting flexibility from ED, such as adding confidence intervals and indexing systems.

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4 Given the considerable attention over the past two years—triggered in large part by differences between NAEP scores and many States’ assessment results—one should not be surprised to see efforts in the reauthorization directed at adding depth and rigor to States’ academic content and student academic achievement standards.
In the analysis of student achievement, *Answering the Question That Matters Most*, CEP authors analyze data from 50 States and conclude that student achievement in reading and mathematics has increased since 2002, though cautious that the reforms that lead to the increase were in place well before the passage of NCLB.

- **PDK/Gallup Poll of American’s View on NCLB**
  
  In this, the 39th annual PDK/Gallup poll of public opinions regarding the nation’s public schools (Rose & Gallop, 2007), the findings seem to present an interesting contradiction—while the knowledge of respondents increased regarding NCLB, their confidence that the law is working as intended seems headed in the opposite direction.

- **National Longitudinal Study of NCLB, State and Local Implementation of the No Child Left Behind Act, Volume III**
  
  This is a federally funded study of progress that States, school districts, and schools have made in implementing NCLB’s accountability provisions. The report, *State and Local Implementation of the No Child Left Behind Act, Volume III—Accountability Under NCLB: Interim Report*, describes patterns in state, district, and school implementation of NCLB provisions concerning accountability and school improvement.

- **Gauging Growth: How to Judge No Child Left Behind?**
  
  In this paper published by AERA in July, researchers at the Policy Analysis for California Education (PACE), report the findings of their 12-State study of reading and mathematics test results from 1992 through 2006. The authors (Fuller, Wright, Gesicki, & Kang, 2007) focus on the performance of fourth graders on NAEP, and find that earlier test score growth has largely faded since the enactment of NCLB in 2002.

- **RAND Study on NCLB Impact on Classroom Practice**
  
  Under the sponsorship of the National Science Foundation, researchers at the RAND Corporation have been studying the impact of NCLB on education systems in California, Georgia, and Pennsylvania and specifically analyzing classroom impact. Earlier this year, the Rand team presented their findings from the final year of this research. The findings indicate a majority of school personnel believe that the focus on student learning has improved, but staff morale has declined. Additionally, a majority of teachers are concerned that state tests are misaligned with curriculum (Hamilton, L, Stecher, B. et al., 2007).

- **AIR: Summary of State Strategies for Districts Identified for Improvement Under NCLB**
  
  This brief (July 2006) by the American Institutes of Research, as a partner in the California Comprehensive Center at WestEd, reports on the strategies state education agency staff have developed for districts identified for improvement under NCLB. Researchers found across the 16 States investigated, the design and delivery of district support varies depending on state capacity, district need, and state models for support. SEA support structures for districts identified for improvement include extensive systems focused at the district level as well as systems focused primarily at the school level. All of the States AIR interviewed utilize technical assistance strategies and/or tools to support areas such as data analysis, capacity building, or resource allocation to districts in need of improvement.
  
  [http://www.ccsso.org/content/pdfs/CCR%20AIR%20state%20support%20districts.pdf](http://www.ccsso.org/content/pdfs/CCR%20AIR%20state%20support%20districts.pdf).

**Peer Reviews of States’ Final Assessment Systems Conclude**

On February 7, 2007, ED Secretary Margaret Spellings sent all Chief State School Officers a letter updating them on “recent developments related to the implementation of the assessment and accountability requirements of Title I.” Included in that letter was a reminder that “all States must administer a fully approved assessment system this school year or risk substantial consequences [compliance agreements and potential loss of some Title I administrative funds].”
At that time, the Secretary reported that 18 States had fully approved assessment systems and two had a few remaining technical pieces that needed to be peer reviewed.

On September 5, 2007, Secretary Spellings sent the State chiefs another letter regarding the Department’s review of State assessment systems. In that letter, she included the first listing of peer reviewers ever released by the Department; this list indicated the names and affiliations of the individuals approved by ED to participate in peer reviews but did not indicate the State review teams on which peer reviewers served. She also announced that in all future reviews, any State that had not yet received full approval, full approval with recommendations, or approval expected status the opportunity to select a fourth peer reviewer to participate in subsequent reviews as may be necessary to achieve a satisfactory approval status. The Secretary also announced another round of three peer reviews (September 17-21, 2007; January 28-31, 2008; and, March 17-20, 2008. The January and March reviews will include the initial reviews of alternate assessments based on modified standards and science assessments.

Last year, we reported that, “ED sent decision letters to States in July regarding the outcomes of the final State assessment system peer reviews. Few States were fully approved and many were threatened with the withholding of administrative funds and reallocation of those funds to school districts due to failure to meet timelines for having their assessment systems in full compliance with NCLB.” At least two States had some portion of their Title I administrative funds withheld last year (those funds indeed had to be re-allocated to LEAs in the State). In May of this year, ED released a short paper, An Update on State Standards and Assessment Systems, in which the threat of withholding was repeated. As Brownstein (2007, July) noted, “ED has been toughening its enforcement of this aspect of the law since last year, when it first announced that non-compliance on standards and assessment issues would be linked to a withholding of administrative funds [p. 2].” While ED’s intent was to make any new penalties effective on July 1, affected States were permitted to submit additional evidence of their final assessment systems for peer review in September before a final decision would be made.

As of October 19, according to a Department listing, 24 States had had their assessment systems approved and another eight were expected to be approved shortly. In addition, four States were in an “approval pending” status with an alternate or LEP assessment issue remaining to be resolved. That left nine States without a status determination at the time and another five States in a compliance agreement or likely to enter a compliance agreement status. According to the Department’s “warnings,” the latter 14 States could be subject to withholding of up to 25% of their Title I funds.

**Growing Concerns Over Low Student Participation In Supplemental Educational Services (SES)**

Interest in why only a few of those students eligible for supplemental education services (generally acknowledged at a little less than 20%) were participating in these programs began to accelerate in mid-2006. That interest has grown considerably this year. Among the more significant developments were these:

- In January 2007, ED announced that it was expanding its SEA Title I monitoring visits to include sending teams to extra school districts to ask questions strictly about public school choice and SES. The Department then sent choice and SES monitoring teams to eight States that were not otherwise involved in Title I monitoring for 2007 (Brownstein, 2007, August).
- On April 18, the U.S. House of Representatives’ Subcommittee on Early Childhood, Elementary, and Secondary Education held a hearing intended to generate ideas for how “to improve the quality of and access to tutoring” provided for under NCLB (Robelen, 2007, p. 23). The hearing followed a Government Accounting Office report released in summer 2006 that cited timely parent notification and attracting providers to rural school districts as continuing problems in the provision of, and participation in, SES.
Congressional interest was also heightened by the increased attention being given to low student participation by various educational interest groups, researchers, and others.

- On June 27, 2007, ED sponsored a summit on SES directed at educators across the nation. At the summit, the Department announced the results of a recent “study focusing on the achievement of students participating in SES in nine large urban [school] districts” (Spellman, 2007, p. 1). Summit participants received copies of the study report (*State and Local Implementation of the No Child Left Behind Act: Volume I—Title I School Choice, Supplemental Educational Services, and Student Achievement*) and a draft handbook with ideas and strategies on issues related to the effective implementation of public school choice and SES. 

- Congressional efforts to fashion major changes to SES provisions were summarized in an October article in *Education Week*, “Schools would be divided into separate categories depending on how far short of the AYP goals they fell for three years. ‘High priority’ schools—those that missed their goals in all or almost all subgroups of students—would be required to offer tutoring to students eligible for Title I services. ‘Priority’ schools—those that missed AYP for only one or two subgroups—would have the option of offering tutoring to Title I students.” Critical questions will include whether the law should direct SES to students in the worst performing schools and how SES providers should be evaluated (Hoff, October 10, 2007, p.19).

### Issuance of Modified Achievement Standards Regulations

As we reported last year, on December 15, 2005, ED released a proposed notice of rulemaking (NPRM) intended to, “provide States with additional flexibility regarding State, local educational agency (LEA), and school accountability for the achievement of a group of students with disabilities who can make significant progress, but may not reach grade-level achievement standards within the same time frame as other students, even after receiving the best-designed instructional interventions from highly trained teachers” (Federal Register, 2005, p. 74624). The release of the NPRM came eight months after an April 2005 announcement by ED Secretary Margaret Spellings that States would eventually be able to test two percent of students in special education who have “persistent academic disabilities” in a modified manner. The final regulations were released on April 9, 2007.

ED used the policy framework covered by these regulations, which now codify requirements for the use of “modified” student achievement standards and modified assessments, in 2004-05 through 2006-07 AYP decisions prior to releasing the NPRM. The regulations permit States to count as proficient up to 2% of all students tested (in addition to the 1% cap on SWDs assessed against alternate achievement standards). Students eligible to be assessed against modified students are those who would have significant difficulty meeting grade-level proficiency standards even with the best instruction.

In 2004-05, more than 40 States applied to use the 2% option in their AYP calculations—most of which ED approved. In 2005-06, at least 33 States applied to continue use of this option. This year, 31 States applied to continue. Interest in this option continues in spite of limited evidence, at best, that it changes to any appreciable degree the eventual outcomes with respect to schools and districts being identified for improvement. A conclusion we reached in our Year 3 paper (Erpenbach & Forte, 2005, p. 29) remains unchanged:

States and researchers we talked with seemed to be in general agreement that a high minimum ‘n’ and the use of confidence intervals will be more effective in minimizing the number of schools—especially those with small enrollments of SWDs—identified for improvement on the basis of the group’s results alone. Nevertheless, and recognizing that there may eventually be additional costs associated with developing modified achievement standards and additional assessments, many States appear to have chosen to add the ‘2%”

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rule’ in spite of the prohibition against using a higher minimum ‘n’ for the students with disabilities group and the prohibition regarding the use of CIs or other statistical treatments in the 2% determinations. Representatives from several States noted in conversations with us on this subject that they requested the flexibility just in case it could help even a small number of schools.

In addition to setting forth parameters for States interested in continuing to exercise this 2% option, the regulations end the use of differentiated minimum n’s for student groups. By 2007-08, States will have to use the same minimum across student groups although a larger number could be used for the “all students” group. After this year, States intending to continue to include the 2% option will have to develop and submit for peer review and ED approval modified academic achievement standards and related tests that meet Department expectations for alignment, rigor, and technical quality. The Department also held a 2-day workshop for SEAs in July on modified standards and assessments and plans to make $21.1M available in grant funds to support the process.

Calls for States to Strengthen Their Academic Content and Student Academic Achievement Standards

In 2006-07, following another round of NAEP score releases, the number of articles, papers, and reports questioning the rigor of States’ academic content standards increased considerably, sparking debates in many sectors including Congress. A primary stimulus has clearly been the notable differences in student achievement as measured by NAEP in comparison to the achievement of students on many State assessments. Those who followed the last ESEA reauthorization will recall that, initially, the law would have required States to use NAEP as one measure of the depth and rigor of their academic standards (content and achievement).

In the ensuing months, the discussion centered on at least two fronts. The first is a call for revisiting existing State content and achievement standards and the development of national academic content standards:

- On October 18, 2006, Olson (pp. 1, 15) reported on pressures that many States were feeling at the time to revisit their academic content standards (something that many, in fact, had started to do). She noted that two national organizations—the National Council of Teachers of Mathematics and the National Research Council—had recently released reports calling for approaches that focused on a smaller number of standards to be assessed in mathematics and science. Both organizations recognize, however, that State standards tend to lack clear and consistent focus and too many disconnected topics. This prevents in-depth teaching for mastery of core ideas and the acquisition of solid subject mastery. Just a month earlier, California Governor Arnold Schwarzenegger had vetoed a bill that would have redefined the standard in that State for proficiency on the State’s assessments; the bill was intended to minimize the number of schools identified for improvement.

- CCSSO, at its November 17-19, 2006, annual conference for the chiefs, added to the agenda a conversation about national standards. Toon (2006, p. 22) writing about the conference noted that “opinions on the issue were about as varied as the states represented.” She also noted that, “Some chiefs proposed aligning standards with the skills sought by the business community. Some proposed developing a national pre-K-16 or pre-K-20 agenda. Some suggested focusing on national standards for student outcomes and leaving states and districts the freedom to decide how to attain them.”

- The chiefs’ discussion was followed by the January 2007, introduction of a bill by U. S. Senator Christopher J. Dodd and U. S. Representative Vernon J. Ehlers that would provide incentives for States to voluntarily adopt national standards in mathematics and science to be developed by NAEP. While approximately 40 organizations quickly endorsed the proposed legislation, it was also quickly given little chance of passage by “Washington insiders.” An intriguing incentive would permit the Secretary of Education to extend by up to four years the 2014 deadline for all students to reach proficiency in reading and mathematics.
• CCSSO again addressed the issue of national standards at an April 22-24, 2007, meeting on legislation. Participants reiterated the need to take into account the needs of the nation’s workforce in any attempt to set national standards while expressing considerable reservations about the potential for a national exam or other mandates by the federal government. The Chiefs also affirmed the need for business, nonprofit, and State and local officials to be involved in any attempt to develop national standards.

The second front involves issues surrounding the wide variation across the nation in how individual States define what it means for public elementary and secondary school students to be “proficient” in language arts or reading and mathematics under NCLB. On this “front,” the conversation shifts primarily to arguments about “how good is good enough?” In other words, even if a State has set what is judged to be fairly challenging academic standards, has the State also set fairly rigorous achievement expectations? The following items are illustrative:

• Writing in Education Week’s series, “NCLB Revisited: Renewing the Law,” David Hoff (2007, April 18, p. 1, 23) is among those opining that what “proficient” means across the nation remains unclear—the law gives States the power to define the term meaning that we have at least 50 such definitions; “sending mixed messages about how to judge the rigor of each State’s standards.” Hoff interviewed many of the key players in the national debate about what proficiency means (or should mean) and capsulated many recently released reports/studies. According to Hoff, “many researchers and other critical observers of the proficiency provisions suggest that states haven’t set challenging standards under the law, especially compared with NAEP [a commonly expressed theme in numerous other articles].” However, Hoff also notes, “Most testing experts and researchers say that NAEP shouldn’t be used to create a universal definition of proficiency [because NAEP is not designed to make accountability determinations].”

• In June, the National Center for Education Statistics (NCES), a part of ED, released its study of States’ reading and mathematics assessment results against the NAEP proficiency standards. As characterized by Cavanagh (2007, June 13, p. 1, 23), “the analysis appears to back up the suspicions of those who have cast a skeptical eye on state on state data showing high percentages of students reaching the ‘proficient’ level in reading and math.” Cavahagh also noted that some researchers who reviewed the study’s methods questioned the reliability of linking NAEP with State assessments. The NCES report (2007, June) itself concludes that:

There is a strong negative correlation between the proportions of students meeting the states’ proficiency standards and the NAEP score equivalents to those standards, suggesting that the observed heterogeneity in states’ reported percents proficient can be largely attributed to differences in the stringency of their standards. There is, at best, a weak relationship between the NAEP score equivalents for the state proficiency standard and the states’ average scores on NAEP. Finally, most of the NAEP score equivalents fall below the cut-point corresponding to the NAEP Proficient standard, and many fall below the cut-point corresponding to the NAEP Basic standard.

The report also concludes that:

These results should be employed cautiously, as differences among states in apparent stringency can be due, in part, to reasonable differences in the assessment frameworks, the types of item formats employed, and the psychometric characteristics of the tests. Moreover, there is some variation among states in the proportion of NAEP sample schools that could be employed in the analysis.
In early October 2007, the **Fordham Foundation** released a report, *The Proficiency Illusion*, (Cronin, J., Dahlin, M., Adkins, D., & Kingsbury, G. G., 2007) claiming that “the primary factor explaining improvement in student proficiency rates in many states is a decline in the [State] test’s estimated cut score” (p. 6). However, it was also noted that, “NCLB does not seem to be fueling a broad ‘race to the bottom’ in the sense of many states lowering their cut scores in order to be able to claim that more youngsters are proficient…” (p. 4). The report by the foundation, which has established a record as a vocal advocate for national standards, immediately drew widely mixed reactions.

According to Manzo (2007, October 10, pp. 1, 16), “The report…reinforces growing concerns that, despite the federal mandates and the improved reporting of student-achievement data under the NCLB law, no common yardstick exists for comparing those school improvement gains across the states.” This finding is consistent with Fordham’s belief that a major NCLB flaw is that each State is permitted to define the meaning of “proficiency” on its assessments. The Fordham study was conducted by Northwest Evaluation Association (NWEA.) drawing on data from the association’s computerized diagnostic assessment given to students in some schools and districts in 26 States. (NWEA’s assessment is not used in any Statewide assessment administrations and attempts to have it approved through the peer review process have failed.) NWEA asserted that the number of students participating in their assessment is sufficient for them to make generalizations about student achievement across each of these States. The full report is available at: [http://www.edexcellence.net/institute/publication/publication.cfm?id=376](http://www.edexcellence.net/institute/publication/publication.cfm?id=376).

**Round Two for Growth Models Proposals**

In mid-November 2005, ED Secretary Spellings (Spellings, 2005, Nov. 18) announced that ED was instituting a Growth Model Pilot Program that would allow for the approval of "no more than 10 high-quality" pilot models to use growth in students’ achievement in their adequate yearly progress (AYP) calculations. In late January 2006, ED issued information on the guidance that would be used in evaluating growth model proposals (U. S. Department of Education, 2006, January 25). While the guidance repeated much of the application requirements outlined earlier by Secretary Spellings (Spellings, 2005, November 21), it also elaborated on the notion of “universal proficiency” by 2013-14, first mentioned in that letter from the Secretary. The guidance stated, “The State should note if its definition of proficiency includes ‘on track to be proficient’ or a related concept [p. 5].” The notion of “on track to be proficient” seems to be that if a student has not attained the proficient cut score, he or she could be considered the same as a student who had in terms of AYP if that non-proficient was on a growth trajectory to proficient. States were expected to closely define what that meant.

By the February 2006, application deadline, 20 States submitted proposals for peer review consideration. Shortly after submitting their proposals, seven States decided to not move forward in the process. The most common reasons we could identify for these “withdrawals” were the lack of at least two years of data to make growth calculations and assessment systems that had not been fully approved. The remaining 13 proposals underwent an initial internal review at ED "to determine that each State is at least minimally able to meet the seven core principles laid out by the Secretary”. That was followed by a peer review by 10 panelists in April.

In May 2006, Secretary Spellings announced that **Tennessee** and **North Carolina** had been approved to participate in the growth model pilot program. The Secretary also set a September 15 deadline for receipt of revised proposals from any of the six States peer-reviewed earlier for consideration for the 2006-07 school year. A second peer review was held in October for the five

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6 NCLB provides that States must develop and adopt academic content and student academic achievement standards. The achievement standards, including associated cut scores, must be peer reviewed and approved by ED. NCLB is designed and intended to support 50 State systems rather than one federal system.
of six States submitting revised proposals. Following this review, Arkansas, Delaware, and Florida were approved to implement growth models for the 2006-07 school year.

In November 2006, other States were invited to submit growth model proposals to the Department for the 2006-07 school year; which nine States did. ED subsequently announced that Alaska, Arizona, Iowa, and Ohio had also been approved to implement growth models.

The CCSSO Accountability Systems and Reporting state collaborative (ASR SCASS) has produced a summary of the state pilot growth models approved (see ASR webpage below)), and the Collaborative is currently producing a paper (release January 2008) aimed toward state education leaders, titled Implementers Guide to Growth Models. The paper includes a discussion of potential purposes for States to implement growth models, and outlines the elements of accountability and data systems needed for different growth models.

For further information and resources on state accountability systems, growth models, and ASR SCASS, go to http://www.ccsso.org/projects/accountability_systems/.

The Next Chapter

In Chapter 2, we report on educational accountability workbook amendments States requested during 2006-07, and ED's decisions on these proposed amendments. Mid-way through the 2007 reviews, ED began identifying and commenting on denied workbook amendment requests.

As we have noted before, information in this report should be interpreted in light of two important caveats. First, this paper addresses publicly available State requests for accountability amendments. Some States may have requested amendments without making these requests public or may have submitted additional requests (via email or verbal communications) that were not shared with CCSSO; thus, it is possible that some requests have been made that could not be captured here.

Second, neither CCSSO nor the authors necessarily endorse any of the educational accountability strategies embedded in the amendments described in this paper. The purpose of this paper is to describe amendment proposals, not to judge any State's intent in making specific proposals, or whether these proposals are appropriate or technically sound. Neither is this paper intended to serve as an evaluation of ED's responses or failure to respond as may be the case. No recommendation of sound, appropriate, or effective practice is implied or should be inferred.
Chapter 2: 2006-07 Amendment Requests and ED’s Decisions

In this chapter, we summarize the accountability plan amendments that States have requested since the end of the 2005-06 school year as well as ED’s responses to these requests. Fortunately, ED’s decision for all States requesting amendments this year are known as this paper is completed; reflecting the Department’s decision to respond in writing to all States submitting accountability workbook amendment requests beginning in 2006-07. It must be noted, however, that although ED is making public its decisions on nearly all amendment requests, the response letters have not always reflected the position communicated to State officials during the negotiations, as reported to the authors, preceding the appearance of the letter.

The balance of this chapter is organized into the following major categories:

- Standards and assessments
- Adequate yearly progress (AYP) model
- Inclusion of all students in accountability
- AYP consequences and reporting

Standards and Assessments

Between February of 2005 and May of 2007, every State underwent a peer review of their final assessment systems under NCLB. These reviews involved the submission, by each State of substantial amounts of evidence in relation to ED’s Standards and Assessments Peer Review Guidance (2004, April 24). While most States have now been granted full approval of their standards and assessment systems or are expected to achieve approval in the near future, a number still face some major challenges in the peer review process. The technical quality of the alternate assessments for students with significant cognitive disabilities has been a particular concern in most of these cases.

There were fewer requests for accountability workbook amendments related to standards and assessments this year. States asked for changes related to their overall assessment systems, expansion of student participation in International Baccalaureate exams in lieu of State assessments, use of score banking, recalculation using “best scores,” and other miscellaneous amendments. There were no requests related to high school exit examinations or end-of-course examinations in connection with AYP determinations. However, Maryland is planning to phase out, beginning in 2009, constructed responses—including any questions requiring short or long written answers—in all of its high school exit examinations (Education Week, 2007, September 19, p. 4).

Changes to Assessment Systems

ED acknowledged (July 10, 2007) Kentucky’s plan to implement a new standard setting process for its general assessments in 2007. The five-step process outlined in the State’s request is “significantly different than in previous years and [the State] will conduct an independent alignment study prior to reporting [AYP] results in 2007.” The plan must go to Peer Review before final approval can be granted. In the 2006-07 school year, New Hampshire implemented a new high school assessment (together with its New England Compact partners Rhode Island and Vermont) that involved a shift from spring to fall testing. This change in administration times prompted New Hampshire’s request to make AYP determinations solely on the basis of graduation rate at the high school level. ED approved (May 23, and July 27, 2007, respectively) these requests for 2006-07 only. South Carolina clarified with ED that, beginning in 2007-08, the

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7 Information on States that have made passing a high school exit examination a prerequisite to graduation and the attributes of those examinations can be found at http://www.hsee.umn.edu.
State will administer a science test in one grade at each of the elementary, middle, and high school levels.

Throughout 2006-07, Nebraska has engaged in extensive negotiations with ED officials in order to secure final approval of its locally based system of academic standards and assessments. If fully approved, the State would be the only NCLB standards and assessments system utilizing local standards and assessments (Borja, 2007, February 21). However, in early summer 2007, Nebraska’s governor signed into law a bill that authorizes the development and administration of Statewide reading and mathematics assessments. According to State officials, the new assessments are intended to supplement, and perhaps even compete with, the current local system of standards and assessments used in connection with NCLB requirements (Cech, 2007, June 13).

Five States plan to implement revised alternate assessments instruments or other strategies for including students with significant cognitive disabilities. Kentucky, using a portfolio approach, has formed a consortium to modify its alternate assessment in order to provide students' scores with the same weights as scores from its general assessments and separate scores in reading, mathematics, and science. The new assessments, first administered in 2006-07, must undergo peer review. South Carolina replaced its Palmetto Achievement Challenge Test-Alt (portfolio assessments) and HSAP-Alt with the SC-Alt, consisting of a series of performance tasks linked to grade-level academic standards at a less complex level. Responding to a directive from ED (October 27, 2006), Texas clarified that Locally Developed Alternate Assessments will no longer be permitted as an option for SWDs (see May 2, 2007, decision letter from ED).

Similarly, Oregon will no longer make its Extended Career and Life Role Assessment available for students with significant cognitive disabilities (approved, July 9, 2007). Virginia “will no longer include the scores of students with disabilities who participate in the Virginia Substitute Evaluation Program (VSEP) in the participation or proficiency calculations for AYP as there are not sufficient numbers of students participating. . . .” Pennsylvania clarified that its full assessment system, including general and alternate assessments, is administered annually in grades 3-8 and high school (approved July 2, 2007).

Arizona, New York, Texas, Virginia, and Wisconsin reported changes to statewide strategies for including English language learners (ELLs) in their assessment systems. Arizona will count newly arrived ELLs (ELLs in their first 10 months of enrollment in a US school) as having participated in the State’s assessments if they take the regular reading and mathematics assessments (but the scores will not be used for AYP decisions). In a December 21, 2006, decision letter, ED confirmed that New York “removed references to using the New York State English as a Second Language Assessment Test as a substitute for the regular language arts assessments for the purposes of calculating [AYP].” Beginning with 2006-07, the State will use this assessment solely for certain newly arriving ELLs to meet the NCLB participation and Title III requirements. This assessment will still be used for Title III purposes.

Likewise, on May 9, 2007, ED confirmed that use of the Reading Proficiency Tests in English in Texas will be limited to those ELLs in their first year of schooling in the U.S.; others will be expected to take the general Statewide content assessments. Virginia received approval (July 16, 2007) to expand its administration of reading/language arts in the Virginia Grade Level Alternate typically used with SWDs to include some LEP students. However, the State will drop its use of the Stanford English Language Proficiency test as a substitute for its Statewide reading test for levels 1 and 2 LEP students. Wisconsin dropped its use of an alternate assessment for English language learners, requiring instead that these students take the regular State assessments using allowable accommodations.
Use of ACT, SAT, AP, or IB Exams as High School Accountability Assessments

Last year, ED granted flexibility for one year permitting Maryland to use Advanced Placement (AP) tests or International Baccalaureate (IB) exams in lieu of the end-of-course Maryland High School Assessments (HSA) for a small number of students. This year, ED extended this option to Virginia (July 16, 2007). Maryland originally argued that the “university-level work represented by AP and IB assessments exceeds the expectations of the Maryland High School Assessments and that these highly rigorous assessments in one of the related disciplines require a student to have fully mastered the content in a foundational course.” Under the one year flexibility approval, students who score 3 or higher on the calculus, English language, and English literature AP exams or a score of 5 or higher on the mathematics studies, mathematics, and English 1A International Baccalaureate exams were considered proficient in high school AYP determinations for algebra/data analysis and English 2.

Earlier this year, Achieve, Inc., released a report on its examination of the use of college admissions and placement tests as Statewide assessments under NCLB (Achieve, 2007). The intent of the study was to “help inform the decisions states are making about high school assessments by providing greater insight into the world of college admissions and placement testing [p. 2].” The study concluded that, “college admissions and placement tests vary considerably—and do not fully measure the knowledge and skills that are included in the ADP [American Diploma Project] benchmarks” (p. 2). The authors of the study offered four recommendations for K-12 policymakers (pp. 3-4):

- Augment admissions tests when incorporating them into statewide testing systems.
- Consider using end-of-course tests to tap higher-level content and skills and place students into college courses.
- Modify existing high school tests to measure college readiness.
- Use existing college placement tests for diagnostic purposes only.

This year, Maryland also received approval (August 28, 2007) to permit all students who meet specified criteria to use AP or IB examinations as substitutes for the State’s high school assessments in algebra/data analysis and English. The approval permitted some change in the criteria. Beginning this year, Maryland will count as proficient for high school English students who score three or higher on the AP English Literature and Composition or the AP English Language examination or a five or higher on the IB English A1 examination. Additionally, Maryland will count as proficient in mathematics students who score three or higher on the AP Calculus (AB or BC) or AP Statistics examinations or five or higher on the IB Mathematics Studies SL or IB Mathematics (SL or HL) examination. ED’s decision letter included this guidance for other States considering adoption of this practice:

The Department recognizes that the AP and IB exams are of high quality and are tied to specific college-level course content. Maryland submitted sufficient evidence that the AP and IB exams meet or exceed the Maryland content standards and the proposed proficiency scores demonstrate that the students taking these substitute assessments have met the corresponding achievement standards. This flexibility agreement will permit Maryland to use the results of the AP and IB assessments in AYP calculations, thereby offering an assessment of college-level course content which may not in every case cover the full breadth of the Maryland high school content standards as required under 34 C.F.R. 200.3(a)(1)(i). This agreement is in effect for four years (the 2006-07 through 2009-10 school years) unless the reauthorization of the ESEA changes the requirements on which it is based. As required by section 9401(b)(3)(A) of the ESEA, within 30 days of the date of this letter, Maryland must provide all interested school districts with notice of this flexibility agreement and a reasonable opportunity to comment, submit any comments to the Secretary, and provide notice and information to the public about its use of the AP and IB assessments in the manner in which it customarily provides similar notice to the public. Maryland must also
annually submit a report under section 9401(e)(1) of the ESEA to the Department at the end of each school year that describes its use of the AP and IB assessments.

Virginia's approval was also for four years and consistent with the guidance provided to Maryland. However, Virginia received approval to use slightly different achievement scores. Students there scoring two or higher of the AP English Literature and Composition or three or higher on the IB English assessments will be considered proficient in the State's Reading Literature tests. Students who score two or higher on the AP Calculus (AB or BC) or three or higher on the IB Mathematics Studies, IB Mathematics Methods, or IB Mathematics assessments will be considered proficient on the State's Algebra I, Geometry, or Algebra II tests.

Banking of Test Results
ED continued to approve requests to “bank” test results used in AYP analyses when students have two or more opportunities to take these tests. As we noted in our 2004 paper, “the version of this practice that...is acceptable to ED involves the designation of a single test administration as the ‘official’ point at which students are expected to have acquired the knowledge and skills specified in the standards on which the test is based” (Forte Fast & Erpenbach, 2004, p.4). Thus, if a student takes the test before the official point and achieves a “passing” or proficient score, the score is “banked” and the student does not have to participate in future administrations of the test.

On February 22, 2007, ED approved a request by Kansas to “bank reading and mathematics high school assessment results [beginning in 2006-07] from multiple administration options until 11th grade because many students do not receive the instruction for which the mathematics assessment is based until 11th grade.” Prior to this time, the State administered its high school mathematics assessment at grade 10 and reading at grade 11.

Oregon received approval (July 9, 2007) to “target up” students’ scores when they take a higher-grade assessment. The greatest number of students affected are typically 8th graders who want to take the high school mathematics assessment early, but this change also affects a small number of students in other grades. Teachers must confirm prior to allowing early participation in the assessments that students have received the higher-grade academic content.

Wyoming clarified (approved June 27, 2007) that retained high school juniors would not have to re-take assessments on which they had already scored in the proficient range or higher. Retained juniors with lower scores in a given content area must re-take the assessment in that area to be counted as a participant. Retained students in grades 3-8 cannot bank scores and must re-take assessments to be counted as participants.

Recalculation of AYP Using “Best Scores” or Results from Subsequent Test Administrations
Last year, Delaware (June 22, 2006) and Virginia (July 27, 2006) were granted approval to recalculate AYP using scores for students who retested subsequent to the official administration of an assessment. Delaware incorporates in recalculated AYP results scores for students who retest after participating in a summer school remediation program. Virginia “include[s] a student's proficient score on the re-test of the high school end-of-course assessments in the calculation of AYP up to Grade 12. The end-of-course assessments include English, Reading, Algebra I, Geometry, and Algebra II in high school.” ED’s decision letter to Virginia did not include any mention of whether final AYP determinations could be delayed or whether schools would be able to delay sanctions pending retesting results. The combination of ED’s decisions in these two cases appeared to set and confirm a precedent. However, this year ED has been less consistent in its decisions in this area.
In 2006-07, three States—Arizona, Michigan, and Pennsylvania—submitted amendments related to the recalculation of AYP using scores from retaken assessments. Arizona submitted an amendment request to use cohort-group approach for the assessment portions of high school AYP determinations. ED’s June 28, 2007, decision letter to the State which specified outcomes associated other amendment requests did not include any reference to the cohort request. In its submission, Arizona argued that it uses a high stakes test for graduation students may retake up to four times subsequent to the initial administration in the spring of 10th grade. The State noted that its student identification system permits tracking individual student progress and movement through the high school years.

Michigan resubmitted an amendment request, which ED originally denied in 2003, to recalculate AYP using scores for high school students who retake the statewide assessment to improve their scores. Although this State’s assessment has changed since 2003 (Michigan now uses an augmented version of the ACT), the high school test is still administered in 11th grade and the results are still used as qualification criteria for a State-funded college scholarship. Given the high stakes nature of this assessment, high school seniors have been permitted to retest. On July 16, ED approved Michigan’s use of a student’s best score on the new Michigan Merit Exam (MME) for AYP determinations beginning with the graduating class of 2008, which is when the first group of students taking the MME will become seniors.

On July 2, 2007, ED denied Pennsylvania’s request to recalculate prior year high school AYP results based on the scores of 12th graders retaking the State’s high school assessments and achieving a higher score. ED’s rationale is instructive in the distinction made between retesting on assessments required for graduation versus those that are not. ED noted:

Section 1111(b)(3)(C)(ii) of the ESEA requires that a State's assessments ‘be aligned with the State's challenging academic content and student academic achievement standards, and provide coherent information about student attainment of such standards.’ The PSSA is designed by the State to align to the State’s 11th grade academic content standards. Therefore, even if students score proficient on the 12th grade retest, they have not demonstrated that they meet Pennsylvania's high school content standards, which are based on what the State deems students should know by 11th grade. In addition, the ESEA requires the timely notification to parents and the public regarding school and district AYP determinations. Allowing a re-test of 12th graders and re-calculating AYP determinations for the prior year would cause confusion regarding the meaning of those determinations; the statute does not allow for re-correcting of AYP determinations after the fact based upon re-tests in subsequent years.

Miscellaneous Amendments

Five States submitted requests related to standards and assessment issues that don’t fall into any of the general categories above. Kansas received approval (July 9, 2007) for its request to amend the names of the proficiency levels used on its assessment reports and report cards. North Dakota will shift its AYP decisions, beginning with 2006-07, on student achievement data from grades 3-8 and 11 instead of the three-year uniform average of data from grades 4, 8, and 11 (approved May 10, 2007).

Beginning in 2007-08, North Carolina plans to compute and report high school science assessment results at the 11th grade instead of at the 10th grade level. According to the State, high school science course-taking sequences vary across high schools and the change will ensure that more students are included in the reported results. The State is also planning to pursue “the issue of substituting different NCLB assessment requirements for...innovative schools...that offer alternatives to the current assessments that better align with the objectives of the innovative schools.”
Wyoming received approval (June 27, 2007) to revise the manner in which reading and writing scores are combined to create a language arts score. According to ED’s decision letter, “because the raw scores for reading and writing have different standard deviations, simply averaging the two scores is not as accurate as standardizing the scores first. This standardization was completed utilizing an equi-percentile procedure.” Wyoming combines these scores for AYP purposes only; otherwise, the scores are treated and reported separately.

ED denied (June 28, 2007) Arizona’s request “to develop and employ a conversion table that will convert the scores of students tested with a calculator, numbers chart, arithmetic tables, or manipulatives on the AIMS mathematics test if the State determines that these accommodations invalidate results by changing the construct of the test.” ED stated that a request of this nature must be pursued through the peer review process for standards and assessments and not through the accountability plan amendment process.

Adequate Yearly Progress (AYP) Model

The requests summarized in this part of Chapter 2 relate to how AYP is calculated and applied. We first describe amendments related to the application of AYP to schools and districts and then amendments to AYP indicators. The final three summaries relate to annual measurable objectives and intermediate goals, States’ strategies for enhancing the reliability of their AYP decisions, and safe harbor calculations.8

This year, many States—including New Jersey, Oregon, and South Carolina—submitted a number of amendments aimed primarily at clarifying many elements in their accountability workbooks. We did not summarize these nor did we see any instances where ED denied any of these clarifications, which were essentially minor in nature but ranged in number from two to twenty-three.

Adequate Yearly Progress (AYP) Application

Requests related to AYP application involved accountability for students displaced by Hurricanes Katrina and Rita in 2005; schools not covered by State assessments and small schools; schools that are new, reorganized, represent alternate settings, or serve students out of their home districts; use of equi-percentile adjustments; the definition of full academic year; identifications based on the same subject and student group and subject; identifications based on scores for only those students served by targeted Title I services; and identification models for districts.

AYP Groups for Students Displaced by Hurricanes Katrina and Rita

Thousands of students were displaced as a result of the devastation caused by Hurricanes Katrina and Rita in late August 2005. In the spring of 2006, ED offered States where school systems were particularly disrupted the option to create a separate student group of displaced students for AYP purposes for the 2005-06 school year only. Alabama, Arkansas, Georgia, Louisiana, Tennessee, and Texas applied for and were granted permission in the summer of 2006 to exercise this option; Mississippi was eligible to apply but did not.

Thus far this year, ED has confirmed that Tennessee (June 12, 2007) and Texas (May 9, 2007) have removed references to this student group for accountability and reporting purposes. Alabama, Georgia, and Louisiana proposed accountability amendments for 2006-07 that did not include references to this student group.

Accountability for Schools Not Covered by State Assessments and for Small Schools

NCLB requires States (and LEAs) to make AYP decisions for all schools. This poses special challenges when schools do not serve grades covered by a State’s assessment system (e.g., K-2

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8 Readers will find as interesting additional background reading a paper on educational accountability systems recently completed by Marianne Perie (2007, in press) for the ASR SCASS.
schools) or where the total enrollment is less than the State’s minimum n for AYP. In regulations issued in December 2002 (regarding educational accountability systems and the calculation of AYP), ED stated that it “will issue non-regulatory guidance to provide examples of methodologies for handling this issue” (p. 71744). That guidance has yet to be issued. States generally make AYP decisions for schools that serve only not tested grades (feeder schools) by using data or results for schools that receive students from the feeder schools. States have also been allowed to apply a variety of strategies for evaluating the AYP of small schools.

ED approved (May 23, 2007) two related amendments for New Hampshire this year. New Hampshire was approved to calculate AYP for schools where K, 1, or 2 is the highest grade served using the performance of 3rd graders who attended those schools and to aggregate results over multiple years for schools that serve fewer than the State’s minimum n of 11.

South Carolina clarified that for primary schools comprised of any combination of grades K-2 where no grade is assessed, AYP will “be based on the third-grade English language arts and mathematics results of the students previously enrolled in the feeder primary school’s highest grade (for a full academic year), tracking these students only to the school(s) in the same district in which the primary school feeds” (approved July 30, 2007).

Montana again sought to extend its “small school review” process for schools that serve fewer than 30 students to schools that serve 30 or more students, a request initially made last year. ED denied (August 2, 2007) the extension again this year stating,

This request is inconsistent with section 1111(b)(2) of the ESEA, which requires States to measure AYP according to statutory guidelines that requires setting a starting point, intermediate goals, and annual measurable objectives, against which all students and subgroups are measured. Montana’s SSR, on the other hand, bases AYP determinations on a subjective scoring rubric and does not emphasize the performance of subgroups. In addition, the vast majority of students in the State (75 percent) are enrolled in 8 school districts, with the largest, Billings, enrolling 15,000 students. It is not necessary for large districts to use the SSR to ensure valid and reliable results.

As noted in the discussion of minimum n later in this paper, ED also denied Montana’s request to increase the all students group size to 40.

Tennessee (approved June 12, 2007) will “sum assessment results over 2 to 3 years until there are at least 10 students in the tested population.”

Accountability for New Schools, Reorganized Schools or Districts, and Changes in The Attribution of Scores for Students Served in Alternate Settings

From time to time, States face the dilemma of how to apply accountability decisions when new schools are created as a result of restructuring or consolidation. Similar issues arise in cases where students are served in alternate settings or settings away from their “home” schools or districts.

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9 In non-regulatory guidance on LEA and School Improvement revised and issued on July 21, 2006, ED directed at G-9, pp. 28-29, “If a State has operational rules for determining AYP for new schools that differ from those applied to other schools, the State must amend its accountability plan to provide its definition of a new school and to describe how it determines AYP for new schools including whether and under what circumstances a restructured school can be considered a new school.” However, this document is non-regulatory guidance, which does not require action by a State. Nevertheless, five States submitted related amendment requests for 2006-07.
Iowa (approved May 18, 2007) clarified that a school is considered new if there is a 50% or greater enrollment increase or decrease (due to realignment) and, in such situations, the timeline for being identified for improvement starts over. ED also approved the State’s rules for dealing with AYP in the case of merged schools containing the same grades. Massachusetts will assign AYP history and accountability status of pre-existing schools to reconfigured schools when schools split, merge, or otherwise undergo enrollment or grade configuration changes (approved July 11, 2007). Michigan (approved July 16, 2007) “will define a new school when 50 percent or more of the student composition changes within a one-year period with the exception of feeder-school grades, and assessment results for the school cannot be validly compared across years. Schools not in restructuring may also be considered a new school when the legal governing entity to which the school is accountable turns over its responsibility and authority to a new legal governing authority and when at least one of the following factors change substantively:

- Staffing: Substantively changed staffing occurs when all the administrator(s) change and more than 50 percent of the certified teachers change.
- Facilities: Substantively changed facilities occur when the building or set of physical resources is changed in a way that substantively affects the educational program.

South Carolina sought to change the State’s requirement for a school to be reconstituted when there was change in the student body of 35% from the previous year (versus the present 50% change over the previous year). On July 30, 2007, ED denied the request stating that the Department “believes that a school in which 65 percent of the student body remains unchanged from the previous year has not truly been reconstituted.” North Carolina has advised ED that its State Board of Education plans to address the matter of defining what constitutes a new school but has not submitted a specific proposal.

South Carolina will also include at the school district level—not at the school building level—the scores of students residing in State-operated group homes. However, students who reside in a State-operated group home but who attend a public school must have their scores included in the school scores (approved July 30, 2007).

ED approved (June 27, 2007) Wyoming’s process for making new school determinations based on receipt of a petition to form a new school. The criteria-based process takes into consideration the AYP history of the school and there can be no evidence that the change (resulting in a new school) was made to avoid accountability.

**Use of Equi-Percentile Adjustments**

On June 14, 2007, ED approved Georgia’s request to continue an earlier approval related to AYP determinations as it transitions from one set of content standards and assessments to newly revised standards and aligned assessments. To make AYP determinations in 2006-07, Georgia “will equate the QCC (older) to GPS (newer) assessment results in grades and subjects where appropriate, using an equi-percentile adjustment for multi-year averaging, safe harbor, and second indicator calculations. This method will be applied for two years across each subject and grade.”

In North Carolina, the State will also use equi-percentile adjustments in AYP determinations as it transitions from old to new assessments (approved May 18, 2007). According to ED:

10 According to Scott Marion at the Center for Assessment (personal communication, July 29, 2006), “When we change tests in ways that prevent us for doing a formal equating, our best bet is to simply project the growth trend from the past test on the new test scale (e.g., if the scores have been increasing 2% per year, we would project a score [mean score or % proficient] 2% higher on the new test). This is only used to allow us to do things like calculate safe harbor or roughly estimate trends. If the tests changed enough not to conduct formal equating, we will re-set the achievement standards and these will not be affected (except as impact data) by the equi-percentile linking.”
North Carolina administered new Algebra I and English I end-of-course (EOC) assessments for the first time during the 2006-07 school year. In order to combine the results from 10th-graders taking the new assessments with those 10th-graders who have banked scores from the former editions of the Algebra I and English I EOC assessments to calculate AYP, the State will equate the new assessment scores to the old scale using an equi-percentile method. The State will use the current annual measurable objectives (AMOs) for this year’s reporting of AYP at the high school level. North Carolina will determine the statewide average cut-point for having 70.8 percent proficient last year and determine the cut-point where 70.8 percent are proficient on the new assessment. The State will use these cut-points to determine whether a subgroup made Safe Harbor.

**Full Academic Year Definition**
States may calculate percent proficient based on the performance of only those students who have been enrolled in a school for a full academic year (FAY). Under NCLB, States define FAY and ED has generally given States considerable leeway in their definitions provided that they do not go beyond one calendar year. While eight States submitted amendments in this area last year, only one did so this year. **North Dakota** (approved May 10, 2007) clarified that “a student who has not been enrolled in a school for the entire year but has been enrolled in the district [such as those moving from an elementary to a middle school] for the entire year will be included in the AYP determinations for the school, district and State.”

**Identification for Improvement Based on Same Student Group and Same Subject**
As reported in each of our four previous papers in this series, ED has consistently rejected proposals to limit identification for improvement to cases where the same student group misses the same AYP indicator twice in two consecutive years (misses in the same “cell” two years in a row) even though the law and regulations are silent on this matter.

**Virginia** proposed in 2006 that identification for improvement be based on same student groups missing same AYP target in two consecutive years, arguing that,

> USED regulations permit States to identify for improvement only those schools that fail to meet AYP for two consecutive years in the same subject, but prohibit States from treating subgroups the same way. This model raises reliability concerns given that many groups...that could fail to demonstrate AYP for any given year. This policy also fails to recognize the different educational challenges and interventions that may be appropriate in cases where different subgroups fail to make AYP. Identifying schools in improvement based on not making AYP for two consecutive years in the same subject and same subgroup will target resources to the particular subgroup(s) that need them the most.

Prior to this year, the only rationale ED provided in writing for its denials of these requests was included in a letter to **West Virginia** (December 31, 2003): “This identification [same cell two consecutive years] procedure is not consistent with the statute or regulations.” No citation or support was provided for this statement. However, in denying similar requests from four States this year, ED did include a written rationale in each case as noted below.

This year, in rejecting **Oklahoma**’s request in this area (June 8, 2007), ED noted that it had previously pointed out to States the flexibility found in section 1111(b)(2) that permits a State to determine schools in need of improvement on the basis of not making AYP in the same subject for two consecutive years. This, ED points out, is because other provisions in the law treat reading and mathematics independently. On the other hand, ED notes that the law does not treat student groups11 independently; thus, ED concludes that the law does not afford schools and districts similar flexibility to identify them for improvement on the basis of same student group

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11 The term, “student group,” is used more commonly now in place of the term “subgroups.”
performance for two consecutive years. Clearly, many States continue to believe that just the opposite conclusion could be drawn—it is the performance of a given student group in a given subject over two consecutive years that should be at issue. The statutes and regulations are silent on this issue.

ED used the same rationale in denying the requests of Michigan (July 16, 2007), Pennsylvania (July 2, 2007), Utah (June 25, 2007), and Washington (June 4, 2007). These States continue to point out that the failure of different student groups from one year to the next is too often based on volatility of scores based on small numbers of students and that it often results in uneven and even inappropriate targeting of resources.

Identifying School Districts for Improvement
In 2006-07, only three States submitted amendment requests related to how school districts are identified for improvement; this contrasts with ten requests in this area in 2005-06 and 18 in 2004-05. Many of the changes requested last year were to bring in line previously approved models with one of the five approaches identified in former Assistant Secretary Johnson’s March 2006 letter and involved consideration of the other academic indicator (OAI) in grade span district AYP models.

Oklahoma clarified that it will apply the OAI (attendance or graduation rate) to each grade span separately when making AYP determinations for school districts and schools (September 27, 2006). Oklahoma also clarified (approved June 8, 2007) that a school district making AYP for two consecutive years in the same subject or performance indicator for which it was identified will no longer be identified as in need of improvement for the succeeding year. Texas (approved May 9, 2007) and Wisconsin submitted clarifications similar to Oklahoma’s affirming that school districts would also be identified for improvement when they do not meet the OAI in all grade spans for two consecutive years.

Adequate Yearly Progress (AYP) Indicators
AYP indicators are the statistics States use in their AYP models and include percents proficient for reading or language arts and mathematics; participation rates for reading or language arts and mathematics assessments; and at least one other academic indicator of student performance, which must include the graduation rate at the high school level.

Percent Proficient
Indices in lieu of percent proficient
Last year, ten States requested permission to use an index in lieu of percent proficient. Three States that submitted related amendment requests last year re-submitted this year—one had been denied in conversations between State and ED representatives; one had been approved; and, ED verbally approved the other according to State officials.

Typically, indices are based on one of two weighting schemes: either they weight performance levels or they weight by student enrollment across grades. In past years, States have generally been permitted to use either type of index as long as separate indices were calculated for reading or language arts and mathematics. The performance-weighted type of index has carried the additional restriction that higher performance (e.g., proportion of students scoring in the advanced achievement level) cannot compensate for lower performance (e.g., proportion of students scoring in the below basic achievement level). In practice, this has meant that the highest weight applies to all scores at or above proficient; States could not weight performance in an advanced (above proficient) level higher than performance in the proficient level. Given the pattern of responses and non-responses last year, we concluded that ED was backing away from approving changes related to indices at this time. That conclusion was borne out in ED’s response this year to New Hampshire.
ED approved (May 23, 2007), for one year only, New Hampshire’s request to use the index system orally approved in 2005-06 for AYP determinations in the 2006-07 school year. Under this model, the State “will allocate 100 index points for performance at the Proficient with Distinction and Proficient level, 80 points for the upper portion of Partially Proficient, 60 points for the lower portion of Partially Proficient, 40 points for the upper portion of Substantially Below Proficient, 20 points for the lower portion of Substantially Below Proficient, and 0 points for No Score.” In its decision letter, ED stated, “New Hampshire may only use the index for the AYP determinations based on assessments administered in the 2006-07 school year. New Hampshire must submit a new index, based upon additional guidance from the Department to be released in summer 2007 [yet to be released], for approval by the Department before making AYP determinations for assessments administered in the 2007-08 school year.”

Washington, whose index proposal last year was verbally denied by ED, submitted another proposal that was approved in writing this year (June 4, 2007). The model, likely more appropriately characterized as multi-grade averaging, is similar to that approved last year for Iowa and earlier for Mississippi, and involves the use of a proficiency index for a school with multiple grade spans where

A school with multiple grade-spans will receive a single AYP determination using the proficiency index. The index will be calculated through several steps: 1) determining the difference between percent proficient and the annual measurable objective (AMO) for each grade; 2) establishing a proficiency index weighting constant by dividing the number of students in a grade by the total number of students within the school; 3) calculating the difference between the percent proficient and the AMO multiplied by the proficiency index weighting constant. The proficiency index for the school is the sum of all individual grade-level proficiency index components. A proficiency index of zero or higher indicates that the AMO has been met by a subgroup in the school.

Last year, Wyoming was approved (July 21, 2006) to implement a similar index model (multi-grade averaging) and was approved this year (June 27, 2007) to use a more detailed model. In its approval letter, ED recognized that

The State has different annual measurable objectives (AMOs) for elementary, middle, and high school grades across Wyoming’s wide variety of school grade configurations. Within AYP calculations, the elementary school AMO applies to grades 3 through 6 (the majority of Wyoming 6th-grade students attend classes in the K-6 elementary school environment), the middle school AMO applies to students in grades 7 and 8, and the high school AMO applies to students in 11th grade. An example of the proficiency index for a hypothetical school serving grades 6 and 7 is illustrated below:

- Grade 6 annual measurable objective for 2006 = 42.00% proficient. Actual percent of Grade 6 Asian students (N=20) proficient = 40%. Difference = -2%
- Grade 7 annual measurable objective for 2006 = 45.42% proficient. Actual percent of Grade 7 Asian students (N=30) proficient = 50%. Difference = +4.58%
- Weighting constants (Grade N/Total N): Grade 4 = 20/50 = 0.4; Grade 5 = (30/50) = 0.6
- Proficiency Index = 0.4*(-2%) + 0.6*(4.58) = 1.95%

12 On June 27, 2007, Assistant ED Secretary Kerri Briggs sent a letter to chief state school officers in States approved to use proficiency indexes in AYP determinations inviting them to send representatives to a meeting (held September 7, 2007) to analyze “the impact of performances indexes on AYP determinations to ensure that they support accountability.” Briggs further stated that, “The Department will use the guidance from this meeting to inform any necessary changes to the current use of performance indexes by States, as well as any future proposals from States that wish to use an index in determining AYP.”
A Proficiency Index of zero or higher indicates that the AMO has been met by the subgroup in the school. In this example, the Asian subgroup in this school meets the AMO with a proficiency index of 1.95 percent. When the Proficiency Index is less than zero, a 95 percent confidence interval is applied to determine if the gap is statistically significant. If the gap (percentage below zero) is not calculated to be significant, the subgroup will be considered to have made AYP.

Although not requesting the use of an index per se, California sought permission to use another proxy for percent proficient: “the countywide percentage of students at or above the proficient level” in cases where a school or district’s percentage of valid scores is 70 or less. The State argued that, “The proposed changes address sampling errors that arise when the percentage of valid scores drops to 70 or less.” ED denied the request (July 26, 2007) commenting in part,

If an LEA has valid test results for less than 95 percent of its tested population, it would not make AYP, regardless of the percentage of students in the district who were proficient or above on the reading/language arts and mathematics assessments. Further, one cornerstone of NCLB is school and district accountability. Approving this request, which would allow an LEA or school to base accountability determinations on students that are not enrolled in the LEA or school, would diminish the very base of accountability. Regarding California’s belief that this request is necessary to ensure valid and reliable AYP determinations, the Department believes that California’s approved accountability workbook currently allows the State to apply a 99 percent confidence level on the percentage of students proficient or above when determining AYP. The Department believes that this, in conjunction with California’s minimum group size, adequately accounts for any sampling errors that may arise.

**Participation Rate**

ED rejected Mississippi’s practice of basing its secondary school participation rate on the number of students actually taking English II and Algebra I; tests in those subjects comprise Mississippi’s reading/language and mathematics assessments for AYP. ED concluded that this practice effectively served to exclude some SWDs. In its decision letter (July 2, 2007), ED stated that all SWDs not taking either of the end-of-course assessments must be counted as non-participants if they did not take an aligned alternate assessment in place of the regular assessments. Further, the State is required to ensure that all SWDs will be assessed with regard to their reading and mathematics (and science beginning in 2007-08) knowledge and skills at least once within the secondary grade span.

Oregon clarified with ED five categories of non-participants:

1. Students who take the life-skills assessment formerly used as the alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities.
2. Students who take assessments administered with modifications.
3. Students assessed below their enrolled grade.
4. Students with too few responses to yield a valid score.
5. Students not enrolled in grade 9 or 10 who elect to take the high school assessment (scores from which may be banked for future AYP determinations); these students must take the State assessment corresponding to their grade level in order to be counted as a participant.

ED approved (June 27, 2007) Wyoming’s request to average participation rate data for two or three years for schools not meeting the 95% target in the current year of AYP determination.
Other Academic Indicators

Elementary/middle school levels

Since 2002-03, few States have requested changes related to their other academic indicators (OAI) at the elementary and middle school levels but four requested such a change this year. Virginia received approval (July 16, 2007) to “expand the options for the other academic indicator at the elementary and middle school level. Districts can choose between attendance rate or the percentage of students proficient or above on the State science, writing, or history/social science assessments…” with a target of 70% or above proficient.

Other amendment requests affecting OAI determinations at the elementary and middle school levels were those from California, New York, and Oregon. California, which uses its Academic Performance Index (API) as the OAI for elementary and secondary schools, asked to apply the school district’s API whenever the percentage of students with valid scores is 70 or less. The State argued that sampling errors arise when the percentage of valid scores falls below this level. ED denied the request (July 26, 2007) stating:

The API, a numeric index that measures the academic performance and growth of a school on a scale of 200-1000 points, requires schools and LEAs to meet the annual API status target of 800 or make a gain of at least one API point from the previous year. California’s API does not conform to the principles laid out by the Secretary in her letter to the chief state school officers on November 21, 2005 (www.ed.gov/policy/elsec/guid/secletter/051121.html). Specifically, the API does not calculate separate reading and mathematics results, it incorporates multiple assessments into the calculation, and it is different for each school and re-adjusts based on the prior year’s performance. Most importantly, the API is not tied to the primary goal of NCLB of 100 percent proficiency by 2013-14. Finally, California has not indicated that schools will not be allowed to make AYP without increasing the number of students who are proficient from the previous year.

This year, New York was approved (August 14, 2007) to delay by one additional year (until 2008-09) the replacement of science with attendance rate as its third performance indicator for grades 3-8. ED denied Oregon’s request to not use OAIs to further identify schools as in need of improvement. The Department cited a number of statutory provisions in support of its decision. ED also pointed out that States may use other academic indicators to identify schools for improvement but at a minimum they must use at least one indicator at the elementary and middle school levels and graduation rate at the high school level.

Graduation rate—high school level

Debate that started last year has continued this year regarding the accuracy of States’ reported graduation rates; especially how those rates are determined. The National Governors Association has enlisted all 50 governors to commit to ensure that the manner in which their States determine and report graduation rates will be based on the number of entering 9th graders and those who graduate four years later.

This year, 14 States made graduation rate amendment requests (the second most common request after the 2% options for modified student academic achievement standards), compared with 12 last year, 11 in 2004-05, and five in 2003-04. This year’s requests involved changes to graduation rate targets, how graduation rates are calculated, use of interim graduation rates, and inclusion of students graduating in more than four years.

Arizona’s proposal “that students who graduate more than four years after their first enrollment in the ninth grade be counted fractionally (.70) in the graduation rate formula” was denied by ED (June 28, 2007). The Department indicated that the statutes clearly provide for graduation rate to be calculated as those who earn a regular diploma in the “standard number of years.” The State
had argued that the adjusted “graduation rate would be especially significant for those schools...whose specifically stated mission is to educate students at risk of dropping out. These students include those who work to support their family, pregnant teens, immigrants, and students who dropped out for a period of time due to family difficulties, poor personal decisions, or financial reasons.”

Arizona also reported that it intends to submit later a second request pertaining to graduation rate. In this instance, the State plans to seek a new graduation rate target (it is currently 71%) due to the impact of high-stakes testing there. The high school graduation class of 2006 was the first that had to meet a new high-stakes testing requirement in order to graduate. Arizona expects the requirement to have an adverse impact on graduation rates that will first surface with the 2006-07 AYP determinations because the State lags these decisions by one year.

**Georgia** sought two graduation rate amendments (one denied and one approved June 14, 2007). Under the first request, ED denied the State’s proposal to include Special Education Diplomas as regular diplomas for AYP determinations. The State argued that SWDs unable to pursue a regular diploma as stipulated in their IEPs still complete 13 years or more of schooling as well as successfully complete their IEPs; thus, their accomplishments should be reflected in AYP decisions. Under the second request, Georgia will incrementally increase its current (meet or show progress toward) 60% graduation target to 100% by 2013-14. According to ED’s decision letter, ”Georgia will apply a ‘second look’ if the district, school or subgroup did not meet the annual target. Schools can meet the standard in one of three ways: 1) absolute bar; 2) three-year average at or above annual target; or 3) 10% increase, if minimum threshold was met the previous year.” Georgia also clarified that it will use the NCES ”proxy” formula to calculate graduation rates.

**Idaho**’s request to continue using, for one more year, its existing system of applying the elementary and middle school OAI to high school level safe harbor reviews was approved by ED (August 2, 2007). The State will not be able to calculate a disaggregated graduation rate for AYP determinations until 2007-08. The Department also informed Idaho that its graduation rate did not comply with NCLB because it included students who take more than four years to graduate. The State was directed to take corrective action beginning with the 2007-08 school year calculations. As noted in the Standards and Assessments discussion earlier in this chapter, **New Hampshire** was approved (May 23, 2007) to make high school level AYP decisions for 2006-07 on the basis of graduation rate alone due to implementation of new high school assessments and transition from spring to fall testing.

ED approved (July 2, 2007) **Louisiana**’s request to replace its current non-dropout rate with a four-year, on-time cohort graduation rate. The graduation rate will be lagged by one year “due to the timeliness of collecting this information, so the 2006-07 AYP determinations will be based upon graduation rate for the 2002-03 entering ninth-grade cohort.” Further, SWDs who take more than four years will be included “in the graduating cohort of the year in which they graduate so long as they receive a regular high school diploma and graduate by the academic year in which they turn twenty-two.” ED’s approval is for one year only—further approval was conditioned on additional data the State will need to submit—and included a caution in which ED noted that it “expects Louisiana provide a more challenging graduation rate target in future years.”

Because of recently passed State legislation, **Maryland** will need to implement an interim on-time graduation rate while preparing to put into place a longitudinal data system with a unique identifier for all students. The interim rate is to be used for 2006-07 AYP decisions with the permanent on-time rate coming online in 2010-11. Prior to 2006-07, the State used a “leaver rate” for AYP. Use of the interim rate will require resetting the AMOs. ED’s August 28, 2007, decision letter to Maryland regarding accountability workbook amendments made no reference to the State’s interim graduation rate proposal.
Massachusetts received approval (July 11, 2007) to apply a four-year graduation rate standard in 2006-07 replacing its Competency Determination (CD) rate that had been used for high school level AYP since 2003. Massachusetts also will lag its graduation rate calculations by one year. In its approval letter, ED required the State to set a graduation rate target of 55%; identical to that used with the former CD rate. While Massachusetts indicated in its amendment request plans to add an improvement measure to its graduation rate metric beginning in 2008 (when it has one additional year of graduation rate data), ED noted “that the Department is approving this graduation rate target for calculating AYP for the 2006-07 school year only. To obtain approval for subsequent years, the Department expects that Massachusetts provide a more challenging graduation rate target in future years.”

Michigan received approval (July 16, 2007) for most of its planned amendments related to graduation rate calculations for AYP purposes. This included conversion from its traditional methodology to the cohort method outlined by the National Governors Association. The State will also now include students “enrolled in a middle college high school or other recognized instructional program that provides for five years to acquire both a high school diploma and an associate degree or other career or technical certificate will be placed in a five-year cohort. Five years will be considered the ‘standard number of years’ for on-time graduation for these students.” However, ED’s approval included a caveat that, “If a student only receives a high school diploma after five years, and not an associate degree or other certificate, the student would not be counted as receiving a standard diploma in the standard number of years.” Additionally,

- On a case-by-case basis, Michigan will also consider LEP students, medically fragile, and students with disabilities to be considered graduates if they receive a regular diploma within five years. For LEP students, several pre-conditions must be met, such as the LEP student must be newly enrolled in a school in the United States at the high school level. For students with disabilities, the determinations will be based on the recommendation of the IEP team.
- For schools serving only grades 9-11 that do not have a graduating class but are still considered high schools, Michigan will use the dropout rate as the other academic indicator for AYP determinations.
- ED denied the State’s request for an extended graduation rate calculation for migrant students indicating that the request is not aligned with the statute or regulations.

ED also approved (June 12, 2007) a similar request from Tennessee’s for defining “standard number of years” as five years and one summer for early college/middle college high schools in that State. Tennessee also will be allowed to use “the event dropout rate” as the OAI for alternative schools with secondary grades; such schools are unable to graduate students according to State law.

ED approved (May 18, 2007) a change in North Carolina’s graduation rate target from 90% to 80% (meet or make progress toward). Last year, the Department approved North Carolina’s implementation of a 4-year cohort graduation rate. Approval of the reduction in the graduation rate target was premised on the fact that the cohort rate is more rigorous than the previous methodology. Oklahoma (approved June 8, 2007) will increase its graduation rate targets incrementally from 68.7% in 2006-07 to 100% in 2013-14. Schools must meet or exceed the target or increase their rates from one year to the next in order to make AYP.

South Carolina will now consider SWDs who receive a regular high school diploma in more than four years as graduates provided that the students have an IEP indicating a graduation date beyond four years (approved July 30, 2007). However, at the same time ED denied the State’s request to add a five-year graduation rate for all students and to permit schools and districts to make AYP if the only reason for not making it is due to graduation rate. The Department stated that statutory prohibitions do not permit such practices.
Virginia received approval (July 16, 2007) to increase its graduation rate target to 61% through 2007-08. After this time, the State plans on making additional changes in this rate following implementation of a Statewide individual student record system. In Wyoming, foreign exchange students will not be included in graduation rate calculations (approved June 27, 2007). ED observed that these students “usually stay in Wyoming schools for only a year and then return to their home country to complete their education; thus, they are not expected to graduate from a Wyoming school.”

Growth Models
As growth models do not conform to the prescribed rules for AYP, States have not been allowed to use them in lieu of percent proficient. In January of 2006, however, ED invited States to apply for participation in the Growth Model Pilot Program that would offer up to ten States the option of using a growth model for AYP. North Carolina and Tennessee were approved in 2006 and implemented their models for the 2005-06 school year. Delaware and Arkansas were approved in November 2006 to use their growth models beginning with the 2006-07 school year; Iowa (May 2007), Florida (June 2007), Alaska (July 2007), and Arizona (July 2007) also received approval to implement growth models for 2006-07 AYP calculations. The Department also conditionally approved Ohio’s growth model provided that the State “adopt a uniform minimum group size for all subgroups. . .”

Hawaii’s request to implement a growth model was submitted for peer review and denied (June 25, 2007) according to the Department because of concerns about the State’s “ability to track individual students and its lack of an approved assessment system. . .” Pennsylvania’s request also went through peer review and was not recommended for approval. ED gave no reason for the denial in its decision letter (July 2, 2007).

Although Connecticut’s request was ultimately denied (May 25, 2007) without stated reason(s), State officials there reported that ED officials had initially informed them that it had passed peer review and had been recommended for approval. ED then asked the State to provide additional information and to clarify a few aspects of the proposed model. State officials provided the requested information and detail only to learn that the model was no longer under consideration. Although they were invited to meet with ED officials in Washington for further discussions, the State chose not to accept the invitation.

Louisiana’s request to implement a growth model related to the assessment of students with the most significant cognitive disabilities was denied (July 2, 2007). That model is described in greater detail later in this paper. Colorado’s request to implement a growth model related to safe harbor determinations was approved (May 23, 2007) and is described in greater deal later in this paper.

Both North Carolina and Tennessee also sought to amend their growth models approved last year by adding the use of confidence intervals (68%). In its denials of these requests (May 18, 2007, and June 12, 2007, respectively), ED commented:

The Department has brought together two panels of outside experts to review State growth model proposals and to make recommendations to the Secretary regarding the growth model pilot. As noted by the first peer review panel in its ‘cross cutting issues’ document (refer to: www.ed.gov/admins/lead/account/growthmodel/cc.doc), ‘the justification for employing confidence intervals around the AYP status target is based largely on reducing the impact of score volatility due to changes in the cohorts being assessed from one year to another, and thus reducing the potential for inappropriately concluding that the effectiveness of the school is improving or declining. Under the growth model, the issue of successive cohorts is no longer in play since we are measuring the gains over time that are attained by individual
students.' Based on the peers’ logic, the Department declines to approve Tennessee’s application of a confidence interval on its growth model calculations.13

Tennessee’s request to amend its approved growth model to “calculate separate accountability determinations for reading/language arts and mathematics when using its growth model to calculate AYP” was approved (June 12, 2007).

Annual Measurable Objectives and Intermediate Goals

In their original accountability plans submitted in early 2003, States were required to describe the trajectory of annual measurable outcomes (AMOs) and intermediate goals (IGs) that would lead from their baseline percent proficient to 100% proficient by the 2013-14 school year. IGs represent increases in the performance targets and can occur every year (in which case they would be equivalent to the AMOs), every other year, or every third year. Regardless of the frequency of these increases, the amount of every increase must be the same. Most States initially chose patterns of annual increases or increases every third year, but a number later adopted a “back-loaded” model similar to one that Ohio originated. This model uses increases every third year in the beginning, but accelerates to annual increases as 2014 approaches.

While 14 States made requests in this area last year, five States submitted related amendments in 2006-07 (there were eight proposals in 2004-05). Last year’s sharp increase in requests was due in large part to the implementation of additional testing in grades 3 through 8. For the most part, ED routinely approved these requests without extensive comment or conditions.

ED accepted retroactively (February 22, 2007) the revised starting points, AMOs, and IGs used by Kansas to make AYP determinations in 2005-06. The State developed revised measures due to implementation of additional testing in grades 3-8 that year. The State applied the new measures in September 2006 and then submitted them for ED’s review. Subsequently, ED approved (July 9, 2007) Kansas’ request to “reinstate its original proficiency targets for reading and mathematics…including the original starting points and IGs.”

On November 29, 2006, ED accepted Montana’s new starting points, AMOs, and IGs for 2005-06 and beyond. The State had originally extended specific targets only through 2004-05 as new assessments were scheduled to be implemented in 2005-06. ED later accepted (August 2, 2007) the State’s clarification that it will use the targets developed for 2005-06 in subsequent years. Similarly, ED accepted (December 21, 2006) New York’s new starting points and AMOs due to the implementation of new assessments as well as North Carolina’s new starting points, AMOs, and IGs for its new mathematics assessments (October 23, 2007). In June 2007, New York also requested approval to begin increasing its grades 3-8 English language arts and mathematics AMOs incrementally rather than holding them steady through the 2007-08 school year (approved August 14, 2007).

On July 30, 2007, ED denied South Carolina’s request to continue, for two more years, the use of its 2006-07 AMOs for elementary and middle school AYP determinations. The Department pointed out that South Carolina had already applied these AMOs for three consecutive years; the most permitted under NCLB before they must be increased.

13 The original criteria sent to States by the Secretary did not include a prohibition against the use of confidence intervals. Further, the “cross-cutting issues” document referred to above did not specifically call for prohibiting the use of confidence intervals; instead a caution was given regarding their use and suggested that, if used, they be limited to 68%—the equivalent of plus or minus one standard error of measurement. However, a prohibition appears to have now been “institutionalized” without the opportunity for public comment—simply on the basis of a decision by those involved in the peer reviews. As we noted in last year’s paper (Forte & Erpenbach, 2006, p. 4), “it should be noted that several technical experts outside the Peer Review panel think this logic is incorrect.”
Strategies to Enhance Reliability

As we have described in previous papers on States’ educational accountability systems, States use a variety of strategies intended to enhance the reliability of their AYP decisions. Generally, the primary purpose is to reduce the likelihood that schools and districts will be misidentified as needing improvement when they do not. Most States specify a minimum number of students required for AYP calculations and many also use confidence intervals around one or more of the AYP indicators. Some States also combine data across two or more years to help reduce the impact of year-to-year differences in student samples on AYP decisions.

Uniform Averaging

Provisions related to uniform averaging are found in section 1111(b)(2)(J). States may average data over two or three years when making AYP determinations. Although the statute refers to “uniform” averaging, ED has permitted “non-uniform” averaging since 2003. In this latter approach, States typically average data such that schools and districts may use scores from only the current school year or average across up to three years; whichever benefits the school or district more. As we have reported in each of the past four papers on State accountability workbook amendments, a number of States have submitted and received approval for amendments related to data averaging. This year, three States—Kentucky, Massachusetts, and Nebraska—submitted related amendments.

On July 10, 2007, ED approved Kentucky’s use of either current-year results or a two-year average of test results for AYP decision-making. Massachusetts will discontinue its use of two-year averaging for AYP performance and safe harbor calculations (approved July 11, 2007). In this case, the State determined that with the implementation of testing in grades 3 through 8 and 10, it has “greatly increased the number of student assessment results included in annual accountability determinations, and thus reduced the potential for sampling error.” Nebraska received approval (May 18, 2007) to average its Statewide writing assessment results over two years for the OAI portions of AYP at the elementary and middle school levels.

Minimum n

From 2003 through 2005, several States requested approval for changes to their minimum n’s for AYP and ED tended to approve most of those requests. However, last year States requesting changes to their minimum n’s found that ED’s decision rules had changed. Virtually all of the requests were denied and the Department effectively ended the use of larger minimum n’s for student groups through the issuance of regulations prohibiting the use of different minimums across the student groups required for AYP determinations.

This year, only two States—Minnesota and Montana—submitted amendment requests concerning the use of minimum n’s. On May 25, 2007, ED approved Minnesota’s plan to reduce the group size used in proficiency determinations for SWDs and LEP students to 20 students in order to establish a uniform group size for all student groups. ED denied (August 2, 2007) Montana’s request to increase its all students group from 30 to 40; the same size used for student groups. In its denial, ED indicated, “This increase in the group size would result in 50 percent of all schools in the State...being excluded from the statutorily defined accountability system and would be evaluated using the State's Small School Review process. In addition, it is not clear that the accountability system would need a minimum of 40 students in order for the

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14The minimum n is the fewest number of students for which AYP will be calculated according to a State’s general AYP rules. If the number of students in a school is below the minimum n, the State must use another method for determining AYP. AYP does not have to be calculated for groups within a school (e.g., students with disabilities) that do not meet the minimum n. Some States have used different minimum n’s for different groups and for each of the AYP indicators but must use uniform group sizes beginning in 2007-08.

15The Education Commission of the States published a paper late last year (Fulton, M., 2006, November) summarizing State trends related to minimum group size for AYP determinations.
percentage of students proficient or above in reading and mathematics to produce valid and reliable results."

**Confidence Intervals and Standard Errors of Measurement**

Most States now use confidence intervals\(^\text{16}\) (CIs) around their percent proficient indicators; with approvals granted through the amendment process. After early approvals for a few, a number of States were subsequently approved to increase the size of CIs from 95% to 99% and to apply CIs to any of the AYP indicators. A few States have also amended their plans to include the use of standard error of measurement (SEM) bands around their indicators. Until last year, ED routinely approved most of these requests, with the only consistent condition of a 75% limit for safe harbor.

Last year, ED was slow to respond officially to any new requests related to the use of confidence intervals other than those related to safe harbor; in most cases, ED’s posted decision letters made no reference to States’ requests in this area. In a letter to U.S. Representative Howard McKeon (Spellings, June 13, 2006), Secretary Spellings provided some insight into the reasons for the delays in responding to States’ requests: “When considering a State’s request for amendments to its accountability system that directly affect validity and reliability, the Department looks at the interaction of the full range of factors, such as the minimum group size, the confidence interval, if any, and the use of uniform averaging” (p. 3).

This year, no State requested an amendment related to confidence intervals. In the only request related to the consideration of errors associated with scores this year, North Carolina indicated in its amendment application that in 2007-08 it intends to make adjustments in the manner in which SEMs are applied in AYP decisions. The NC State Board of Education requires that students who do not score at or above achievement level III on end-of-course assessments in grades 3, 5, and 8 be retested up to two times to determine if they can meet the standard as part of the decision-making process related to grade promotion. The procedure “allows students to meet the standard using one SEM to acknowledge measurement error and decrease the number of students that would have to be retested….”

**Safe Harbor**

Although the term “safe harbor” is not actually used in the NCLB statutes and regulations, it has become an apt description of provisions found under section 1111(b)(2)(I)(i) of the law. In its general form, safe harbor may be invoked when a student group misses the percent proficient target, but makes the other targets and reduces the percent of students scoring below the proficient achievement level by at least 10% from the previous year. The school or district makes AYP when it meets these safe harbor criteria.

Six States requested changes to their safe harbor rules. Perhaps the most interesting accountability amendment this year was the one ED approved (May 23, 2007) for Colorado in this area. “Colorado will add an additional safe harbor measure that uses a longitudinal model to compare the same students’ scores from the prior year to the current year.” The approval is for one year only with continuation contingent on the Department’s review of impact data. According to ED’s decision letter:

Colorado has a data system that is able to track achievement as students progress through the school system. The longitudinal safe harbor will allow any district, school, or student group to make adequate yearly progress (AYP) provided there is a 10 percent decrease in the percentage of non-proficient scores in the current year compared to the previous year, comparing individual student assessment results in the current and previous year. Colorado will include this calculation for any district, school, or subgroup that does not meet the annual standards.

\(^{16}\) CIs are statistical estimates of the range in which a school’s or a district’s “true” AYP score might fall given the score it actually obtained. For further information about confidence intervals, see Hill and DePascale (2003); Jaeger & Tucker (1998); Linn, Baker, & Betebenner (2002); and Marion, et al (2002).
measurable objective or the traditional safe harbor, provided that the match rate for the group of students is 95 percent or higher. Colorado will not apply a confidence interval to this application.

In its submission, Colorado appears to be the first State to draw on the provisions of section 1111(b)(3)(B) which provides that, “Each State educational agency may incorporate the data from the assessments under this paragraph [those required for State assessment systems] into a State-developed longitudinal data system that links student test scores, length of enrollment, and graduation records over time.” Information on Colorado’s rationale in support of this amendment can be found at www.cde.state.co.us.

In Nebraska, ED approved (May 18, 2007) that: “When making…[AYP] determinations, including Safe Harbor, Nebraska will average the Statewide writing assessment results for the current year and the previous year to determine whether the State, district, school, or subgroup met the target for the other academic indicator at the elementary and middle school levels.” New Hampshire received approval (May 23, 2007) to apply its index system to safe harbor reviews. According to ED’s decision letter, “in order to make Safe Harbor, schools and districts must reduce the percentage of index points ‘not earned’ (i.e., 100 minus the school or district index average) by 10 percent. In addition, the percentage of students scoring proficient or above must increase in order for the school or subgroup to meet the Safe Harbor provision.”

ED acknowledged (July 9, 2007) Oregon’s request that, “due to the resetting of achievement standards for the 2006-07 school year in March 2007, Oregon will recalculate the achievement scores in 2005-06 using these new standards in order to calculate Safe Harbor.” South Carolina submitted several clarifications to its previously approved five options approach to conducting safe harbor reviews (approved June 27, 2007). Wyoming’s clarification that a school makes safe harbor only if “it has a decrease in the percentage of students scoring in the lowest performance category in reading, for the subgroup trying to meet Safe Harbor, or if the percentage of students reading below basic in the subgroup trying to meet Safe Harbor is below 15 percent for the current and previous years, which is the elementary or middle school other academic indicator.”

Inclusion of All Students in Accountability

NCLB extended federal policies regarding the inclusion of students with disabilities (SWDs) and English language learners (ELLs) in Statewide assessment and accountability systems farther than any of the preceding versions of ESEA. SWDs and ELLs must now participate in assessments in all grades, 3 through 8 and once in grades 10-12, and their participation and performance must be reflected in the AYP analyses for every school, district, and State.

Many States continued to request a number of amendments related to the inclusion of SWDs and ELLs in their accountability plans. With respect to SWDs, almost all amendments centered on the continuation of assessments based on “modified” student academic achievement standards. Amendments involving SWDs are described first, below. The description of amendments to inclusion policies for ELLs follows.

Inclusion of Students with Disabilities in Assessments and AYP

NCLB requirements for the full inclusion of SWDs in statewide assessment and accountability systems have posed a number of challenges to States over the past five years. Like last year, States sought permission this year to take advantage of options related to the “2% proxy” flexibility ED first offered for 2004-05 AYP decisions, modify their definition of the SWDs student group for AYP decisions, and change AYP measures for this student group.

Modified Achievement Standards and the 2% Solution

On April 9, 2007, almost 16 months after issuing its Notice of Proposed Rule Making, ED released final regulations related to the assessment of SWDs against “modified” student
academic achievement standards (more commonly referred to as the “2% option”)\textsuperscript{17}. The new regulations:

provide States with additional flexibility regarding State, local educational agency (LEA), and school accountability for the achievement of a small group of students with disabilities whose progress is such that, even after receiving appropriate instruction, including special education and related services designed to address the students’ individual needs, the students’ individualized education program (IEP) teams (IEP Teams) are reasonably certain that the students will not achieve grade-level proficiency within the year covered by the students’ IEPs (Federal Register, 2007, p. 17748).

Of particular interest in the final regulations is the inclusion of language at § 200.7(a)(2)(ii) that prohibits a State from using a different minimum n for separate groups; a prohibition that now “applies to all States, not just those that choose to develop and administer an alternate assessment based on modified academic achievement standards.” As we have noted earlier in this paper, this provision has the effect of rescinding prior approvals for different minimum n’s across student groups. Also included in the final regulations are provisions that:

- Require States to develop one or more alternate assessments for SWDs unable to participate in the regular assessments with or without accommodations as provided at §300.160(c). In addition to the alternates based on alternate achievement standards (1% assessments), States may offer alternate assessments based on their academic content standards and “modified” achievement standards. The allowance for these alternate assessments based on modified achievement standards reflects a belief that there are some students with disabilities who are not able to demonstrate their grade-level content knowledge and skills on a State’s general assessments even with accommodations.
- Clarify that out-of-level assessments are not be permitted for students assessed against modified achievement standards as found at §200.6(a)(3)(ii). The use of out-of-level assessments for students studying at lower academic levels than their grade level was prohibited under regulations issued by ED on July 5, 2002. In regulations issued on December 9, 2003, pertaining to significantly cognitively disabled students, ED recognized that “instructional” level (out-of-level) assessments “that meet the requirements of §200.1(d) may be considered to be an alternate assessment aligned with alternate achievement standards for the purposes of calculating AYP.”
- Permit the scores for students formerly receiving special education services to be included in SWD student group AYP determinations for up to two years as provided at § 200.20(f)(2). A few States had argued that a longer period could be supported as long as students are still being monitored under IDEA provisions. The two-year limit may be a restriction that is contrary to IDEA if a formerly served student continues to be “monitored” for a longer period.

In 2004-05, more than 40 States applied to use the 2% option in their AYP calculations and most of these requests were approved. Last year, at least 33 States applied for an extension of this option in making 2005-06 AYP determinations and 31 of these requested the same extension for 2006-07. The continued interest in this option is somewhat surprising given that there is little evidence that it changes AYP outcomes to any appreciable degree and that States are prohibited from applying confidence intervals in these AYP determinations.

There are three options that States can choose from with respect to the application of modified achievement standards for SWDs participating in State assessments (see Spellings, 2005, May 10). These include:

\textsuperscript{17} At the same time, the Department released draft non-regulatory guidance to accompany the regulations (U.S. Department of Education, April 2007). The Department also held a two-day workshop in late July to assist interested States in the development of assessments based on modified student academic achievement standards.
• **Option One**—States that do not have and do not wish to develop modified achievement standards (which must be based on grade level content expectation) may add a number equivalent to 2% of all students assessed to the percent of SWDs scoring at or above the proficient level. To qualify for this option, a State must describe how it will take six prescribed steps to build appropriate assessment tools for the target group of students.

• **Option Two**—States that have administered a high quality modified assessment statewide for two years or more prior to 2006-07 can use the results from this assessment for AYP purposes. Such assessments must be aligned with modified achievement standards as described above.

• **Option Three**—A State may offer another alternative for ED to consider.

States that have been approved to use option One for 2006-07 AYP calculations include Alabama, Alaska, California (mathematics only), Delaware, Florida, Georgia, Hawai'i, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Hampshire, New York, Pennsylvania, Tennessee, Utah, and Virginia.

Three States found all or part of their Option One request denied by ED; all denials related to inadequate participation rates. ED rejected (June 28, 2007) Arizona’s request to continue its exercise of Option One because the State did not meet the participation rate for the SWDs student group, noting that SWDs participation rates reported by the State for 2006-07 were 93% in mathematics and 89% in reading. In California, ED approved (July 26, 2007) the State’s request to use Option One in mathematics, but denied its application for reading because the participation rate for SWDs was below the required 95% threshold in this content area. ED cited both low participation and low achievement of SWDs as the two reasons for turning down (July 2, 2007) Mississippi’s request:

Statewide assessment participation rates for the students with disabilities subgroup, for purposes of measuring AYP, must be at or above 95 percent in the prior year. Mississippi’s participation rate in 2005-06 for the students with disabilities subgroup was 86 percent….each State [must also] provide information on actions taken to raise achievement for students with disabilities or narrow the achievement gaps, as well as evidence that such efforts are improving student achievement for this group of students. Results of the Mississippi State assessment indicate declining achievement for the students with disabilities subgroup each year since 2003-04 in every grade in both English/language arts and mathematics. Given these two factors, the Department cannot approve Mississippi’s request.

Details related to the specific analyses on which the cited decline in achievement was based were not provided in ED’s response.

States approved to use Option Two for 2006-07 include Kansas, Louisiana, North Carolina, North Dakota, and Oklahoma. In the latter’s approval, ED added two qualifiers:

Approval of this amendment does not constitute approval of Oklahoma’s alternate assessment based on modified academic achievement standards; such assessment as well as Oklahoma’s modified academic achievement standards must be submitted to the Department’s standards and assessment peer review process. In addition, pursuant to the Department’s April 9 [2007] regulations, by the 2007-08 school year, Oklahoma must adopt a single minimum group size for all subgroups, including the “all students” group, when calculating the percentage of students who are proficient.

As this comment indicates, States offering or planning to offer alternate assessments based on modified achievement standards are required to submit evidence regarding the quality of these assessments for federal peer review. The first of these reviews is scheduled to occur in January 2008.
Three States requested permission to use Option Three for 2006-07. **Colorado** has been approved to apply a model as follows: “For schools and districts that do not make AYP solely on the basis of the students with disabilities subgroup when compared to the current annual measurable objectives (AMOs)…, Colorado will compare the percentage of students proficient against the 2003-04 AMOs for the students with disabilities group to determine if the group met AYP.” **Massachusetts** is approved to “assign 100 ‘performance index’ points to students selected based upon set criteria equivalent to 2.0 percent of all students assessed. For any school or district that did not make AYP solely due to its students with disabilities subgroup,…this adjusted index score [will be used] to re-examine if the school or district made AYP for the 2006-07 school year.”

**Maryland** received approval (August 28, 2007) to extend its modified achievement standards model approved for 2005-06. Under this model, schools that do not make AYP based solely on the SWDs group have IEP teams review individual student IEPs to affirm the identity of those students who might have received proficient scores on a modified assessment if one had been available. In its submittal, the State reported that last year it received appeals under this option from over 160 schools representing approximately 1,200 students. Maryland approved about 66% of the reading appeals and about 50% of the mathematics appeals resulting in 115 schools that made AYP.

**Defining the Students with Disabilities Student Group for AYP Decisions**

Until this year, only two States had been approved to extend the definition of the SWDs student group to include exited students. **Georgia** was approved in 2003 to include students in the SWDs student group who were still receiving special education services either in the form of monitoring or support in the transition to the regular classroom. **South Carolina** was approved in 2004 to include in the SWDs student group students who no longer are directly served in special education as long as their IEP calls for monitoring services. Since then, although several States made similar requests, ED appears to have denied these; almost always without written comment.

However, as noted above, new regulations adopted in April 2007, include a provision permitting States to include formerly served SWDs for up to two years in making AYP determinations for this student group. This year, five States—California, Idaho, Iowa, Pennsylvania, and Utah—submitted requests in this area. ED has approved all of the requests, specifically noting in California’s decision letter, “these students will not be included in the count of students with disabilities when determining the…group size for reporting or accountability purposes.”

On June 14, 2007, ED denied Georgia’s request to exclude some SWDs from AYP determinations. According to ED’s letter:

> The Department cannot approve Georgia’s request to include, for accountability purposes, only those the students with disabilities (SWD) subgroup who were reported as SWD from the Fall full time equivalent (FTE) count day through the State’s spring testing window; excluding from the SWD subgroup the scores of students who are identified for special education programs and services after the Fall FTE. The proposed change could create a negative incentive to identify students as SWD late in order not to be counted in the subgroup. NCLB uses the IDEA definition of a student with disabilities. The length of time a student receives services has no impact on whether a student meets the definition.

On June 27, 2007, ED approved Wyoming’s proposed amendment to permit school districts to petition the State to exempt from participation rate calculations students taking an alternate assessment (based on alternate achievement standards) who move into a district after the annual testing window begins. ED noted that:
The petitions will be reviewed by the State on a case-by-case basis. This exemption will only be granted to an LEA if the amount of time left in the testing window is too small to obtain a valid score for the student. Districts must show sufficient evidence to prove to the Wyoming Department of Education that, given the amount of time left in the testing window, the individual learning characteristics, and item response time, there is not enough time for a valid test administration. Wyoming expects that the test administration be completed in as many content areas as possible (reading, writing, mathematics, or science). Consideration for eligibility for exemption is not based on disability category, amount of time for which the student receives service, the location of the delivery of service, or the level of functioning of the student.

**Changing AYP Measures for the SWDs Student Group**

**Louisiana** proposed a growth model in which it would assign one of four growth labels based on the amount of change a student with the most significant cognitive disability demonstrates on the State’s alternate assessment for this student group. Under this proposal, “Given the severe cognitive disability of these students, a student who shows growth on this scale will be considered ‘proficient’ for purposes of NCLB accountability.” Since third grade is the initial year students take this assessment, they will be assigned one of the four performance levels for use in accountability. ED denied the request (July 2, 2007) but did extend approval for the State’s use of a scale method previously approved to make proficiency determinations for this student group. The Department noted in its decision letter that: “To be eligible to implement a growth model as part of the Department’s pilot, a State must have submitted a growth model proposal to the Department for review by the growth model peer review panel and have an approved standards and assessment system.”

**Arkansas** clarified that “Independent and Functional Independence” will be used to describe advanced and proficient performance levels, respectively, for SWDs taking assessments based on alternate achievement standards (approved March 12, 2007). **Montana** confirmed that it will continue to allow every small district (i.e., those with fewer than 200 students in the tested grades) to count up to two proficient scores based on student achievement on alternate assessments aligned to alternate achievement standards when making AYP determinations regardless of whether this exceeds the 1% cap.

As noted in the earlier discussion of graduation rate accountability workbook amendments, ED also denied (June 14, 2007) **Georgia’s** request to count special education diplomas as regular diplomas for AYP measures. **Hawai’i** clarified the order in which it will include the proficient scores of students taking alternate assessments based on alternate achievement standards using an eight-step ordering process (approved June 25, 2007). ED informed **Virginia** (July 16, 2007) that because of the new 2% regulations, the State could not use a 1.1 percent cap on proficient and advanced scores on the Virginia Alternate Assessment Program beyond 2006-07.

**Inclusion of English Language Learners in Assessments and AYP**

In our previous reports on States’ annual requests for amendments to their accountability workbooks, we noted that prior to the enactment of NCLB most States excluded many English language learners (ELLs; referred to as Limited English Proficient or LEP students in the law) from participation in Statewide assessment and school and district accountability decisions. As a result, few States had viable plans for addressing NCLB requirements when they came into effect.

Less than one year after the initial approval of States’ accountability systems in 2003, ED offered some flexibility through then Secretary Paige’s February 20, 2004, letter allowing States to:

- exempt ELLs from the reading or language arts assessments during their first year of enrollment in U.S. schools,
• exclude reading or language arts and mathematics scores for these same students from AYP calculations that year,
• count these same students as participants in the reading or language arts assessments if they take the English language proficiency assessments that year, and,
• extend the definition of ELL to include students who had exited ESL or bilingual education programs within the previous two years.

Since the initial letter from Secretary Paige, nearly all States had taken advantage of these options by 2004-05. Thus, ED’s subsequent release of regulations providing for this same flexibility on December 13, 2006, did not have much effect on States’ AYP models.

Like last year, the most common amendment requests this year related to the exemption of ELLs from testing or accountability, changes to the definition of the ELL student group, and the use of alternate assessments for ELLs.

**Inclusion in Assessments and AYP**

**Alaska** received approval (January 12, 2007) to exempt a recently arrived ELL from one administration of its language arts assessment if that student is new to the U.S. and enrolled in school during 12 months prior to the current test administration, but after the previous year’s administration. An ELL qualifying for this exemption must participate in the State’s English language proficiency assessment. **Arizona’s** request to count recently arrived ELLs as having participated in their reading and mathematics assessments (providing they did so) was approved on June 28, 2007. The State will not include the scores on these assessments for AYP for the year in which the students are classified as “recently arrived” (a one-time exclusion according to ED’s letter). However, Arizona was denied permission to grant appeals to schools identified for improvement if this outcome could be shown to result from the inclusion of scores for ELLs in their first three years of enrollment.

In **Oregon** (approved July 9, 2007), newly arrived ELLs enrolling for the first time in a U.S. school after May 1 will be exempted from the reading/language assessments. Further, results from neither a reading/language assessment nor a mathematics assessment will be included in AYP analyses. As noted in ED’s decision letter, “because Oregon tests its students multiple times throughout the year, with the final assessment window occurring in April, this clarification will ensure that each newly arrived LEP student is only exempted from one full administration of the State reading/language arts test.”

**Michigan** sought to extend the flexibility offered in ED’s 2003 letter and 2006 regulations for an additional, or second, enrollment year. However, ED approved, for the first year of enrollment in a U.S. school only, that Michigan could:

- Use the results from English Language Proficiency test (ELPA) to determine whether the ELL student should take the MEAP or MI Access English Language Arts (ELA) test. If taken, scores will be counted towards 95% participation for AYP, but test scores will not be counted into AYP results. If the MEAP or MI Access ELA test is not taken, participation in the English language proficiency testing program will count toward the 95% participation rate for AYP.
- Count scores on the MEAP or MI Access mathematics test for participation but not for calculating percent proficient.

**Virginia** found its similar request denied by ED (July 16, 2007). The State’s request was straightforward—exempt from reading or language arts assessments for two years for a new to the U.S. students—with no options such as those sought by Michigan.
ED denied (May 25, 2007) Connecticut’s proposed three alternatives for exempting ELLs from its State assessments, stating that these alternatives were not permitted under NCLB and go beyond the regulations issued in September 2006:

- Alternative 1: Allow for LEP students in their first academic year in a U.S. school to be exempted from the State’s mathematics assessment.
- Alternative 2: Exempt LEP students from the State assessments if they have been enrolled in a U.S. school for more than 10 school months and less than 20 school months and receive a score of 1 or 2 (the equivalent of Below Basic and Basic, respectively) on the English language proficiency test.
- Alternative 3: Exempt all LEP students from the reading/language arts and mathematics assessments until they have been in a U.S. school for three years.

This is the third consecutive year that Connecticut has requested a three-year exemption from participation in content assessment for ELLs.

ED also denied (July 2, 2007) Pennsylvania’s proposal to exempt ELLs from initial participation in its assessments. The State had sought to delay their participation until the students had scored in level 3 (of 5) or higher on the State’s English language proficiency assessment or had reached their third year of receiving English as a Second Language (ESL) services. ED stated that it “cannot approve this request because it is not consistent with the statute or in line with the Department's September 2006 regulations regarding ‘recently arrived’ LEP students, who may be exempted from one, and only one, administration of the reading/language arts assessment in their first 12 months of schooling in the United States.”

Washington also found its request in this area denied by ED (June 4, 2007). The State had asked to exempt ELLs in their first year of enrollment in U.S. schools from taking “any assessment in which all test items require reading English.” The State had also sought to “not count the results for accountability purposes of any assessment of LEP students (for up to three years) in which all test items require reading English, unless the student demonstrated at least intermediate proficiency in English.” The Department’s rationale is instructive by way of recapping the applicable regulations:

The Department issued regulations in September 2006 that permit a State to exempt recently arrived LEP students (i.e., those who have been in schools in the U.S. for less than 12 months) from one administration of the State’s reading/language arts assessment. Those regulations, however, require a State to assess all LEP students in mathematics and to assess LEP students who have been enrolled in schools in the United States for more than 12 months in reading/language arts. The regulations also permit a State to exclude the scores of recently arrived LEP students in reading/language arts (if taken) and mathematics from one AYP determination. Washington’s request exceeds the flexibility afforded by these regulations. The Department believes that assessing all students is important and beneficial as it provides useful information to teachers in order to inform instruction and to parents to let them know how their child is achieving. Additionally, Washington may permit any language translation or accommodation that may be necessary, so long as it does not invalidate the test result, but the students must be assessed.

ED further clarified in a meeting with the CCSSO ELL SCASS (State Collaborative on Assessment and Student Standards) on September 26, 2007, that (a) ELLs who were born in the U.S. can be considered newly arrived during their first year of enrollment in a U.S. school and (b) that newly arrived ELLs must participate in Statewide science assessments if those assessments are offered in the grade in which they are enrolled.
Use of Alternate Assessments for ELLs

Several States requested amendments related to changes in their use of alternate assessments for ELLs resulting from a rejection of these alternates during the federal Standards and Assessments Peer Review process. As noted previously under Standards and Assessments, Arkansas clarified (approved March 12, 2007) that it has discontinued use of an alternate portfolio for ELL students. Instead, ELLs will participate in the State’s regular assessments with or without accommodations. Wisconsin similarly reported that it will no longer offer the Wisconsin Alternate Assessment for ELL students. Instead, they will be included in the regular State assessments with accommodations if needed (December 22, 2006).

Nevada clarified (May 25, 2007) that “school districts may not administer modified content assessments for LEP students who are in their first year of enrollment in a school in the United States. These students will participate in the [regular] State assessments.” Oregon clarified that results from State-offered native language assessments will be considered as a modified test administration and tested students will be counted as non-participants in AYP calculations (July 9, 2007). However, ED approved (July 16, 2007) Virginia’s request to expand its administration of an alternate assessment for SWDs to include some ELLs. At the same time, ED denied the State’s request to continue using the Stanford English Language Proficiency (SELP) test to assess reading or language arts content for LEP students. Virginia had sought to continue use of the SELP to gain additional time to “research options to assess LEP students.” ED noted that the SELP had been included in peer reviews of Virginia’s assessments and found to not meet the attendant requirements. Virginia has since agreed to discontinue use of the SELP as a substitute for State assessments in reading and language arts for certain LEP students.

However, ED denied a request (July 11, 2007) from Massachusetts to change its method of assigning reading/language arts index points to ELLs in their second year of schooling in the U.S. The State submitted extensive documentation and argued that its Statewide assessment, the Massachusetts Comprehensive Assessment System, has proven that it is not an “appropriate instrument for assessing the academic performance of students who are not yet able to demonstrate that level [sufficient to engage in regular classroom work in English] of English language proficiency.” The Department commented:

> The State proposed to assign reading/language arts index points according to the students’ progress toward achieving English language proficiency as measured by the Massachusetts English Proficiency Assessment (MEPA). These index points would be incorporated into the Composite Performance Index (CPI), which is the basis for school and district AYP performance and safe harbor calculations. Neither the ESEA nor the Department’s September 2006 regulations regarding the inclusion of LEP students in State assessment and accountability systems provides the flexibility to permit Massachusetts to use an English language proficiency assessment for AYP determinations. Doing so would mean that LEP students would not be held to grade-level content.

Changes to the Definition of English Language Proficiency

Wyoming indicated that it will use “proficient” on the Wyoming English Language Learners Assessment as a standard for English language proficiency (approved June 27, 2007). Although neither definitions nor assessments of English language proficiency (ELP) are a component of States’ Title I accountability workbooks, these issues are critical to States’ requirements under Title III of ESEA. It is anticipated that States’ ELP assessments and Title III accountability models will receive significant attention from ED over the next year.

Defining the English Language Learners’ Group for AYP Measures

As we noted in our 2005 paper (Erpenbach & Forte, p. 32),

> ED has consistently allowed States to extend their definition of ELLs for AYP purposes to include students who exited ESL or bilingual education programs within the previous two
Inclusion of Foreign Exchange Students

This year, two States—South Carolina and Wyoming—sought to exempt foreign exchange students from AYP calculations, ED denied both (July 30 and June 27, 2007, respectively). In both cases, ED’s rationale was the same. As the Department stated in a letter (Ferrier) to Chief State School Officers in March 2003 regarding the inclusion of foreign exchange students (refer to: ncela.gwu.edu/pubs/legislation/nclb/foreignexchange03.pdf):

An important goal of No Child Left Behind is to help English language learners who reside in the United States attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging content standards expected of all students. The requirements of No Child Left Behind, however, should not deter a school district from accepting foreign exchange students. First, many foreign exchange students from non-English speaking countries have enough command of English to benefit from regular classroom instruction in English and, for that reason, would not be considered limited English proficient under No Child Left Behind. Please note that, pursuant to the Department’s September 2006 regulations, any foreign exchange student who is limited English proficient may be exempted from taking the reading/language arts assessment and the results of the mathematics assessment do not need to be included in AYP determinations.

AYP Consequences, Reporting, and Appeals

Summarized here are States’ requests in 2006-07 to modify their accountability system designs with respect to the awarding of school improvement funds, order of applying public school choice and supplemental educational services (SES) sanctions, State reporting timelines, and school or district appeals of AYP decisions.

Requests Related to District Improvement

Colorado re-submitted a request from 2006 related to the awarding of school improvement funds for which ED had not formally responded to the original submittal; only verbally indicating at the time that it “was under review.” Colorado pointed out that States are “limited in their ability to award School Improvement funds to districts identified for improvement, especially when districts have no schools that have been identified for improvement.” On May 23, 2007, ED denied the re-submitted proposal, stating:

The Department cannot approve Colorado’s proposal to give equal priority in the awarding of school improvement funds under section 1003(a) of the ESEA in support of district-wide systemic strategies and reforms to districts identified as in need of improvement that have no
schools in the district identified as in need of improvement as is given to schools identified as in need of improvement. A State is required under section 1003 of the ESEA to reserve 4 percent of the Title I funds it receives for school improvement activities. Of the amount reserved, the State must allocate not less than 95 percent directly to districts for schools identified for improvement. Based on this language, the State may not initially allocate section 1003 funds to districts that do not have any schools identified as in need of improvement. However, under section 1003(d), if a State determines, after consultation with districts in the State, that the amount of section 1003 funds it is required to reserve is more than the amount needed to provide assistance to schools in improvement, the State may allocate the excess amount to districts identified as in need of improvement that do not have any schools identified for improvement, either as part of the regular Title I allocation process or in accordance with section 1126(c), which permits a State to allocate excess Title I funds to districts based on need.

South Dakota submitted several minor accountability workbook amendments related to sanctions, its requirements for school improvement plans, and State monitoring of each school and district’s plan for implementation of an improvement plan following identification for improvement. ED approved the changes on April 13, 2007.

Public School Choice and Supplemental Educational Services
ED approved a pilot project in 2005 permitting four school districts in Virginia to reverse the order of these sanctions for some or all of their schools identified for improvement. In late July and mid-August 2006, four States—Alaska, Delaware, Indiana, and North Carolina—received letters from ED informing them that selected school districts in their States had been approved to offer SES in year one of school improvement. That announcement signaled an expansion of the pilot program launched in 2005 but did not provide details on which States applied and how the decisions were made. However, while permitting the State to continue its prior approval for four school districts to offer SES in year one, ED denied Virginia’s request for an expansion of the flexibility in 2006 because the State had not received approval for its final State assessment system.

At the same time that the above States were informed regarding their applications to reverse school choice and SES, at least for some school districts, the Secretary notified the Anchorage, Alaska and Hillsborough County, Florida school districts that they had been approved to join Boston and Chicago as SES providers even though they had been identified for improvement under NCLB. How these school districts were selected to receive this flexibility, including information about any application and review process, remains unknown.

Changing the Order of SES and Choice Sanctions
This year, four States submitted accountability workbook amendments requesting approval to reverse the order of public school choice and SES or to permit schools identified for improvement to offer both choice and SES in the first year. A fifth State—Virginia—sought to expand an earlier approval to reverse the order. Colorado re-submitted a request first made in 2005-06. The State indicated it was re-submitting the matter since it had not received any response from ED the prior year other than the matter was “still under review by legal counsel.” Colorado sought to permit districts to offer both choice and SES in the first year of identification for improvement. The State’s rationale centered on the fact that in many rural areas there are no viable options for public school choice and the fact that many parents do not want to exercise that option even when there is another school across town or in another district that their child could attend. On May 23, 2007, ED denied the proposed amendment stating:

Because the statute [at] §1116(b)(1)(E) only requires a district to offer public school choice in a Title I school in its first year of improvement, a State cannot require its districts to offer both choice and SES in that first year. The State may, however, permit districts to implement SES voluntarily in the first year of improvement. If a district chooses to offer both public school
choice and SES options in the first year of improvement, please note that the district must satisfy all public school choice requests first, followed by requests for SES from students in schools in the second year of improvement. Then, the district may satisfy SES requests from students in schools in the first year of improvement.

**Pennsylvania** also sought to reverse the order in which the public school choice and SES sanctions are applied to schools identified for improvement. The State’s main argument was that the provision of tutoring (such as that provided through SES) before permitting a student to leave a school is a more responsible way of attempting to improve student achievement. ED denied the request (July 2, 2007) stating that,

> When a school fails to make AYP for three consecutive years, both SES and public school choice would be offered. The Department cannot approve this request because it is inconsistent with section 1116 of the ESEA. The Secretary is currently evaluating the pilot program to allow a few districts in some States to reverse the order of offering public school choice and SES for schools identified as in need of improvement. In the near future, the Department intends to open this pilot to all States who meet the eligibility requirements.\(^\text{18}\)

**Connecticut** and **Utah** requested a straightforward reversal for the public school choice and SES sanctions once a school is identified for improvement. ED denied (May 25, 2007) Connecticut’s request stating only that “it is inconsistent with the statute.” Utah noted that under current law, its schools are already required to provide for public school choice. The State also offered an argument similar to Pennsylvania—it is more important that SES be available before changing schools when student achievement lags. On June 25, 2007, ED denied the request stating simply, “At this time, the Department declines to approve Utah’s proposal to switch the order of choice and SES. However, the Department is inviting eligible States to apply for participation in the SES Pilot Program that allows some of their school districts with schools in year 1 of school improvement the option of providing SES to students instead of public school choice. Please see [www.ed.gov/nclb/choice/help/ses/07agreements.html](http://www.ed.gov/nclb/choice/help/ses/07agreements.html).”

**Virginia** sought to extend the opportunity to reverse the order of public school choice and SES to “all schools identified in need of improvement throughout the commonwealth.” ED denied that request on July 16, 2007. Instead, the Department offered the State the option of applying (separately) to “renew its participation in the Department’s SES Pilot Program to allow selected school districts with schools in year 1 of school improvement the option of providing SES to students instead of public school choice.”

**Targeting SES and Choice**

As in 2005-06, several States proposed targeting the SES and choice sanctions to specific student groups. **Utah** again asked for permission to target SES and choice to the lowest performing students; a request denied by ED on June 25, 2007. ED stated, “section 1116(e) extends eligibility for SES to all students from low-income families. Only if a district needs to prioritize because it cannot meet all demand may it target these options to the lowest-achieving students.”

**Connecticut** sought to apply consequences solely to the student group(s) not making the performance target and to allow for differentiated consequences depending on the reason for identification for improvement. ED denied the request on May 25, 2007, without any rationale other than commenting that the changes would be inconsistent with NCLB.

\(^{18}\) ED has not previously indicated an intention to make this policy shift. The decision letter to Pennsylvania did not give any further detail including what the eligibility requirements would be.
ED also denied Pennsylvania's proposal apply differentiated consequences in cases where “a school/district fails to reach the threshold for only one of less than 10% of the measurable and appropriate AYP targets....” The State argued that differentiated consequences afford more effective use of resources and not all schools and districts identified for improvement need to be subject to the same sanctions. Pennsylvania noted that of 24 school districts failing to make AYP in 2006, nine failed to reach the AYP thresholds for fewer than 10% of the measures; the same was true for 201 of the 548 schools identified for improvement. ED denied (July 2, 2007) the request on the grounds that it was inconsistent “with section 1116 of the statute.”

**School districts identified for improvement as SES providers**

As noted above, in 2004-05 ED allowed for the first time a few specific school districts identified for improvement to serve as supplemental educational services providers. This year, Connecticut asked for permission to allow school districts identified for improvement (estimated at 15) to serve as SES providers. The State did not include a rationale or other data in support of its request. On May 25, 2007, ED responded indicating that the Department:

declines to approve Connecticut’s proposal to allow 15 LEAs that are in need of improvement to be eligible to apply to provide supplemental educational services.... Under the Title I regulations, LEAs that are in need of improvement are not eligible to be SES providers. However, in the 2004-05 school year, the Secretary began a pilot program that allowed certain LEAs to be SES providers despite being in need of improvement. In her May 15, 2006, letter, the Secretary explained that she is currently reviewing the results of this pilot program and will be making a decision about the continuation or expansion of the program in the first part of June 2007.

**Reporting**

In 2005-06, the expanded requirements for statewide assessments in grades 3-8 (rather than the previous requirements for one test in each of the 3-5 and 6-9 grade ranges) came into effect. As a result, many States introduced new assessments that year. For nine States, this necessitated a longer reporting timeline for AYP results primarily due to the additional time required to conduct standard-setting activities and revision of AYP algorithms to incorporate the expanded testing data. This year, only four States submitted accountability system amendments related to delays in reporting.

This year, only four States submitted accountability system amendments related to delays in reporting.

On July 10, 2007, ED approved Kentucky’s timelines for a delayed release of AYP results due to the administration of a new general assessment and a new alternate assessment for students with the most significant cognitive disabilities. Under the approval:

Kentucky will delay the release of AYP results should it prove necessary. Final AYP reports are expected to be available not later than September 2007. Schools and districts that did not make AYP in the 2005-06 school year have been notified to plan for the possibility of offering public school choice. These schools will implement public school choice immediately upon receiving preliminary results if they do not make AYP based on the 2006-07 assessment results. Schools and districts already identified as in need of improvement that fail to make AYP must immediately begin offering the next level of services. Schools or districts identified as in need of improvement that make AYP for the first time based on 2006-07 results must continue to offer the same level of interventions. Schools or districts that make AYP for the second consecutive year based on 2006-07 results are no longer identified as in need of improvement and no action is required.

**Michigan**, which is also administering a new high school assessment and a new alternate assessment based on alternate student academic achievement standards, received approval
(July 16, 2007) to delay issuing 2006-07 school report cards should that be necessary. The State planned to issue preliminary report cards based on results of the new assessments and notify schools not meeting AYP targets “that they must move ahead and implement consequences.”

Arizona received approval (June 22, 2007), for one year only, to release final AYP determinations at the beginning of September this year (instead of August) although the State must still make preliminary AYP determinations by August 1. Oregon also sought approval to release AYP determinations after the beginning of the 2007-08 school year. ED approved (July 9, 2007) the request commenting:

Preliminary determinations will be made by August 28. Consistent with the steps required for other States that have requested to delay AYP determinations, Oregon will hold all schools and districts in their current AYP status for the start of the 2007-08 school year and continue to apply NCLB consequences, as applicable. In addition, the State should take the following steps:

1. Schools currently identified for improvement will begin offering services before the beginning of the school year.
2. Schools that begin offering services will not stop offering services if final AYP determinations indicate that the school is no longer identified for improvement.
3. Schools that might be identified as in need of improvement for the first time for the 2007-08 school year will provide information to parents alerting them to the fact that public school choice might be offered if the schools are identified as in need of improvement.
4. For schools identified as in need of improvement for the first time for the 2007-08 school year should begin offering public school choice as soon as preliminary results are available.

In a reporting amendment not related to delay, Wyoming clarified that it combines reading and writing to create a language arts score for AYP determinations only (also described in the Standards and Assessment section of this paper). Otherwise, the State reports these scores separately. ED acknowledged (June 27, 2007) the State’s clarification but cautioned that:

approval of this amendment request is neither approval of the reading/language arts assessment used to comply with NCLB requirements, which will need to be peer reviewed through the standards and assessment peer review, nor the starting points, annual measurable objectives, or intermediate goals, which will need to be formally submitted to the Department for review and approval before they can be used for AYP determinations.

Appeals to Identification for Improvement Determinations

Although only two States submitted accountability workbook amendments in this area this year, it appears from other reports that ED officials may be taking a closer look at how States are dealing with appeals of AYP determinations from schools and districts. For example, as a result of a Title I Monitoring Visit in April 2007, Nevada was directed to cease granting appeals from schools identified for improvement on the basis of making significant improvement from a lower to higher proficiency level. ED cited, in part, a section 1116(b)(2)(B) proviso that appeals must be based on “statistical or other substantive reasons.” ED’s decision did not elaborate on what “substantive reasons” might include nor does its treatment of this matter in the July 21, 2006, non-regulatory guidance on LEA and school improvement (see B-3, page 5).

We also commented on this subject in our 2003 paper (Erpenbach, Forte Fast, and Potts, pp. 27-28) noting that “States were asked to describe, in Critical Element 9.2 of their accountability workbooks, their plans and procedures for schools and districts to appeal accountability decisions.” At that time, we found wide variation among States in their responses to this
workbook element and observed that this subject did not receive much attention from ED during the accountability workbook Peer Reviews earlier that year. We concluded, "it is an area that could prove troublesome for States and school districts. The need for systematic, uniform, and objective processes/procedures for receiving and acting on evidence submitted by a school or district questioning an identification for improvement seems quite self-evident."

ED approved (June 27, 2007) Wyoming’s clarification “that, if a school or district believes it has been incorrectly identified as failing to make AYP, it may request…review [of] the AYP decision within fifteen (15) days of the preliminary AYP decision, as described in [Critical] Element 1.4. The request to review the AYP decision may be based on statistical error or other substantive reasons as contained in Section 1116(b)(2) of NCLB.”

The result in Arizona was different as was the nature of the amendment request. As indicated previously in this report, the State sought to establish as grounds for appeal evidence that a school’s failure to make AYP was due to the inclusion of the scores of limited English proficient students in their first three years of schooling in the United States. On June 28, 2007, ED responded that it could not approve the request:

We note that section 1116(b)(2)(B) of the ESEA provides that, ‘if the principal of a school proposed for identification believes, or a majority of the parents of the students enrolled in such school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal may provide supporting evidence to the local educational agency, which shall consider that evidence before making a final determination.’ Overturning a school’s AYP determination based on the scores of LEP students who have not been in U.S. schools for at least three years, however, does not constitute ‘statistical or other substantive reasons.’ To the contrary, it conflicts directly with other provisions of the ESEA. Notably, as required in section 1111(b)(2)(C)(i) of the ESEA, AYP must be defined by a State in a manner that applies the same high standards of academic achievement to all public elementary and secondary school students in the State. ‘All public…school students’ includes LEP students who have been in U.S. schools for less than three years (with the limited exception of ‘recently arrived’ LEP students as authorized through the Department’s September 2006 Title I regulations). Moreover, under section 1111(b)(2)(C)(v)(II), a State must separately measure the achievement of specific subgroups, including LEP students. Allowing Arizona to use the appeal process to exclude many, if not all, LEP students from AYP determinations simply because they have not been in U.S. schools for at least three years would effectively override the explicit statutory requirements that LEP students be included in AYP determinations and that schools be held accountable for their academic achievement.

The Next Chapter

In Chapter 3, we present a set of observations and conclusions regarding States’ 2006-07 accountability workbook amendment requests and ED’s responses to those requested as posted at the Department’s website. We also comment on the few approvals that were unanticipated and likely next steps regarding States’ continuing efforts to fine-tune their educational accountability systems.
Chapter 3: Observations and Conclusions

In this chapter, we summarize States’ accountability amendments that ED has consistently rejected as well as approvals that were somewhat surprising to those who have followed the decision-making process over the past five years. The requests listed here are more informative this year in that, for the first time, ED has responded in writing to all 44 States submitting accountability workbook amendment requests; posting on its website both approved amendments and, in many cases, denied requests—usually with supporting rationale. Both the complete written response and the public posting of denials with accompanying rationales can be considered significant, substantive improvements in the amendment process over previous years.

Consistently Denied Requests

As in previous years, ED consistently rejected States’ requests to limit identification for improvement to schools and districts that missed AYP in the same subject and group for two consecutive years. New last year, and continued this year, was ED’s general rejection of proposals to increase minimum n’s, confidence intervals, or anything that appeared to “tweak” AYP determinations such as the use of an index in lieu of percent proficient.

The Department also consistently denied targeting sanctions in schools identified for improvement to the student group(s) missing AYP targets (how consequences are implemented); any alternatives for the inclusion of ELLs in assessments or AYP; and the reversal of public school choice and the provisions of supplemental educational services (reminding States that this is a separate, albeit not clearly understood or transparent, application process).

Unanticipated Approvals

This year, there was one true unanticipated or “surprise” approval, and a few other approvals worth noting:

- The longitudinal safe harbor model approved for Colorado was a true surprise. In this case, ED granted a one-year approval for a longitudinal safe harbor model (in addition to use of the traditional model). The approval will “allow any district, school, or student group to make adequate yearly progress…provided there is a 10 percent decrease in the percentage of non-proficient scores in the current year compared to the previous year, comparing individual student assessment results in the current and previous year.” The match rate for the group of students must be at least 95% or higher. ED cited the State’s data system that is able to track student achievement as a reason for the approval. However, it should be noted that although Louisiana also has a student information system that allows student-level data to be tracked over time, its request for a growth model targeted to students with significant cognitive disabilities was denied.

- ED approved the expansion of Maryland’s limited approval in 2005-06 to use student achievement on selected Advanced Placement and International Baccalaureate examinations in lieu of the State’s tests in reading, language arts, and mathematics includes two related surprises. The first was approval of the Maryland’s request to broaden the pool of participating students and to lower slightly the minimum scores required to equate to proficiency on State tests. The second was to approve a similar request for Virginia (with minimum scores slightly below those used in Maryland). In both cases, ED provided four-year approvals.

- Tennessee’s received approval to use five-years and one summer session for determining the graduation rate in early college/middle college high schools there. Michigan also received approval for a similar request.

- Three approvals of interest surround the recalculation of AYP results to include scores for students who retest following summer school (Delaware) and the inclusion of passing scores for students retaking tests needed for graduation (Virginia). However, ED’s related decisions seem mixed. Pennsylvania’s request to re-calculate the scores of 12th
graders taking its high school exams was denied because the assessments are aligned to 11th grade academic content standards. **Michigan** received approval for a model that includes elements of both Virginia’s and Pennsylvania’s approach. Michigan’s high school assessments are given in the 11th grade but 12th graders may retest to qualify for a State funded college scholarship. Michigan will be able to recalculate AYP decisions based on retesting 12th graders but must make initial AYP decisions based on 11th grade results. **Arizona** is awaiting a decision on its request to use a cohort model that includes elements of Virginia’s model (not addressed in ED’s June 28, 2007, decision letter to the State).

**Next Steps**

In concluding last year’s paper on accountability workbook amendments, we opined that the 2006-07 school year would be a quiet one for accountability amendments as ED and many States had started shifting more of their focus to ESEA reauthorization discussions. It turns out that we were wrong—States seemed to spend much more time on fine-tuning their accountability systems—especially as they brought on line additional assessments in grades three through eight and otherwise made changes in their assessments. A large majority of the States focused intently on gaining approval of their alternate assessments for students with significant cognitive disabilities.

Among “trends” we noted in ED’s decision letters this year were:

1. Cautions where States were perceived to have set low graduation rate targets.
2. Signs the Department may be taking a closer look at States’ procedures for addressing appeals of identification for improvement decisions by schools and districts.
3. The fact that the Department will take a closer look at the use of indexing in AYP determinations. How this may affect the use of indexes and whether it results in related regulations or non-regulatory guidance is not clear at this point.

In 2007-08, States are required to bring on line their science assessments in at least one grade in each of the 3-5, 6-9, and 10-12 grade spans. Many States will still be working toward approval of their assessments for students with significant cognitive disabilities. Many will also be developing modified achievement standards and assessments based on those standards. States are also more likely to turn their attention to ESEA reauthorization issues although many Washington “insiders” have already signaled their belief that actual reauthorization is unlikely before 2009.
References and Other Resource Material


Final Regulations, Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule [regarding the achievement of students with the most significant cognitive disabilities], 68 Fed. Reg. 68698 (Dec. 9, 2003) (to be codified at 34 C.F.R. pt. 200).


Final Regulations, Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule [regarding alternate assessments based on “modified” student academic achievement standards], 72 Fed. Reg. 17748 (April 9, 2007) (to be codified at 34 CFR Parts 200 and 300).


Hoff, D. J. (2007, April 18). Not all agree on meaning of NCLB proficiency. Education Week, pp. 1, 23.


Ho and Haertel—[check for ref under EIMAC assessment comm. web page


Johnson, H. L. (2006, March 7). Letter to chief state school officers regarding April 1, 2006, for the submittal of 2006 accountability workbook amendments and transmitting information related to the identification of LEAs for improvement and other information related to other aspects of state accountability system potentially impacted by the addition of grades required to be assessed in the 3-8 span beginning in 2005-06. Washington, DC: U.S. Department of Education.


Olson, L. (2005, October 26). NAEP gains are elusive in key areas. Education Week, pp. 1, 22-23.


Olson, L. (2006, October 18). As States feel pressed to revisit standards, calls are being renewed to tighten them. Education Week, pp. 1, 15.


APPENDIX A – Acronyms Used in This Paper

AMOs       Annual Measurable Objectives
AYP       Adequate Yearly Progress
CIs       Confidence Intervals
CCSSO     The Council of Chief State School Officers
ED        United States Department of Education
ELL       English Language Learner
EOC       End-of-Course Test
ESEA      The Elementary and Secondary Education Act of 1965
ESL       English as a Second Language
FAY       Full Academic Year
IASA      The Improving America’s Schools Act of 1994
IDEA      Individuals with Disabilities Education Act
IEP       Individualized Education Program
IGs       Intermediate Goals
LEAs      Local Educational Agencies
LEP       Limited English Proficient
NCLB      The No Child Left Behind Act of 2001
OAIs      Other Academic Indicators
SWDs      Students with Disabilities
Appendix B - Timeline of significant events related to state accountability plans under NCLB

2002
- January—The No Child Left Behind Act of 2001 becomes law.
- July—ED issues Standards and Assessment Regulations.
- December (early)—ED issues Educational Accountability Regulations.
- December (late)—ED releases Accountability Workbook Templates to States.

2003
- January 31—Draft Accountability Workbooks due to ED.
- January – April—Peer Reviews of State Accountability Workbooks conducted in States.
- June 27—Secretary’s Letter regarding inclusion of SWDs in AYP.
- June (late)—All State Accountability Plans tentatively approved by ED (several with compliance agreements).
- July—CCSSO’s releases Year One paper on State Accountability Plan requests and ED approval decisions.
- August—States begin submitting Accountability Plan amendment requests to ED; a process that would become on-going.
- December 9—ED issues Achievement of Students with the Most Significant Cognitive Disabilities Regulations.
- December 11—Secretary’s Letter regarding additional flexibility for SWDs in State Assessment and Accountability Systems.
- December 18—ED releases Q & A regarding alternate achievement standards.

2004
- February 5—Assistant Secretary’s Letter setting April 1 deadline for accountability amendment requests applying to 2003-04 AYP decisions
- February 20—Secretary’s Letter announcing new flexibility related to ELLs.
- March 2—Secretary’s Letter announcing further flexibility related to AYP for SWDs.
- March 29—Secretary’s Letter regarding calculation of Participation Rate.
- April 28—ED issues Standards and Assessments Peer Review Guidance for the NCLB Peer Reviews.
- May 21—Assistant Secretary’s Letter elaborates on flexibility for Participation Rate.
- May 21—Second Secretary Letter’s regarding calculation of Participation Rate.
- October—CCSSO’s releases Year Two paper (2003-04) on State Accountability Plan amendments.

2005
- January 27—Assistant Secretary’s Letter setting April 1 Deadline for 2004-05 Accountability Plan Amendments.
- February 16-19—ED conducts Standards and Assessments Peer Reviewer Training and first round of Standards and Assessments Peer Reviews under NCLB.
- April 7—Secretary Spellings announces Raising Achievement: A New Path for No Child Left Behind initiative.
- May 10—Secretary sets June 1 deadline for State accountability amendments and issues information related to serving SWDs with “Persistent Academic Difficulties.”
- June 13—ED issues updated non-regulatory guidance concerning the provision of supplemental educational services.
- August—ED releases non-regulatory guidance concerning alternate achievement standards for students with the most significant cognitive disabilities.
• September 29—Secretary’s Letter concerning students displaced by Hurricanes Katrina and Rita.
• October—CCSSO releases Year Three paper (2004-05) on State Accountability Plan amendments.
• December—NPRM released regarding modified achievement standards and assessments for some SWDs.

2006

• January 25—ED issues guidance for NCLB Growth Model proposals and sets February 17 application deadline. Eight States approved for peer review in April and two (Tennessee and North Carolina) approved to implement model in May.
• March 7—Assistant Secretary’s Letter setting April 1 deadline for new accountability amendment requests and related transition information.
• May 15—Secretary’s Letter announcing separate application process for participation in extension of pilot program permitting schools to reverse order of choice and SES and some LEAs identified for improvement to serve as SES providers.
• June—all 49 yet-to-be-approved States (50 States, Puerto Rico, and DC) notified of assessment system Peer Review results.
• July 21—ED releases revised non-regulatory guidance related to LEA and school improvement.
• September 13—ED issues new regulations related to the achievement of LEP students.
• September 19—Assistant Secretary’s Letter updating chief state school officers on ED’s priorities.
• November—CCSSO releases Year Four paper (2005-06) on State Accountability Plan amendments.
• November—ED announces that Arkansas, Delaware, and Florida were approved for growth models following submittal of revised plans in September.

2007

• February 7—Secretary’s Letter updating chief state school officers on matters related to the implementation of Title I assessment and accountability requirements.
• March—second round of peer reviews for growth model proposals conducted. Four States—Alaska, Arizona, Iowa, and Ohio eventually approved.
• April—CCSSO releases paper on alternate assessments for SWDs with significant cognitive disabilities.
• April 9—ED issues regulations related to modified achievement standards and other matters as well as draft non-regulatory guidance related to the modified achievement standards.
• May—ED releases non-regulatory guidance for the assessment and accountability of LEP students.
• May—ED releases An Update on State Standards and Assessment Systems.
• June 27—Secretary conducts National Summit on Supplemental Education[al] Services.
• June 27—Assistant Secretary’s Letter to chief state school officers announcing Department’s intent to review the use of performance indexes in AYP determinations.
• July 25—ED conducts invitational meeting for States without approved alternate assessments for students with significant cognitive disabilities.
• July 26-27—ED hosts meeting for interested States to discuss development of standards and assessments based on modified achievement standards.
• September 5—Secretary’s Letter to chief state school officers conveying information about the Department’s review of State assessment systems. Includes a listing of the peer reviewers.
• November—CCSSO releases Year Five paper (2006-07) on State Accountability Plan amendments.
APPENDIX C – Additional information on reauthorization recommendations (from Chapter 1)

Educational Testing Service (ETS) National Survey
In May, ETS sponsored a national survey of parents and educators (including school board members) to sample American’s opinions on standards, accountability, and flexibility related to the reauthorization of NCLB (Hart Research Associates & The Winston Group, 2007). The principal survey findings were:

- Even though there are expressions regarding a lack of sufficient knowledge about the law and strong misgivings among teachers and school administrators, there is considerable support for reauthorization but with major changes.
- The law needs to be better explained to the public. The more that is known about the law—especially its requirement of linking funding to accountability, the greater the level of support. Respondents, however, heavily favored (59% to 35%) a single set of national standards.
- Parents and educators support high accountability standards but differ in whether minor or major changes are needed in the law. Educators believe major changes are needed as well as greater flexibility around the law’s implementation; especially for poorly performing schools. Only 1 of 4 and just over 1 of 10 parents believe that new administrators and new teachers respectively should take over in schools that are testing poorly.
- All groups agree that the biggest problem facing schools today is inadequate parental involvement. Parents and other public responders cited lack of discipline in the classroom while educators cited inadequate funding as the second greatest challenge faced by schools. Educators believe that differences in student populations and parent support are the key variable in student performance on State assessments. At least two-thirds of all educators would give ELLs two years before participation in State assessments while less than one-third of the general public agrees.

Fordham Institute Survey of “Washington Insiders”
In December 2006, Fordham Foundation researchers (Loup & Petrilli, 2007) conducted an online survey of 20 “Washington insiders” to solicit opinions related to NCLB’s reauthorization including when that might occur and what changes are most likely. Twelve persons known to have inside knowledge and a variety of perspectives responded. The major findings were:

- Reauthorization is not likely until 2009. The respondents are not “buying” the promises of politicians.
- An major overhaul of the law is unlikely. Respondents generally agreed that national standards won’t be mandated; testing in history won’t be added; data disaggregation by race will continue; and, public school choice will remain as will the highly qualified teachers requirements.
- Some changes have already been foreshadowed. Congress is likely to include the growth model pilot program to open this option to all States (but with specifics yet to be determined). Also likely to be included is ED’s pilot program permitting some States to reverse the order of public school choice and supplemental educational services (SES). It seems somewhat likely that science achievement results will be folded into AYP calculations.
- Major battles remain to be waged. Among these will be whether Congress should provide incentives for States to adopt national standards19; increase flexibility for States and

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19 Given the considerable attention over the past two years—triggered in large part by differences between NAEP scores and many States’ assessment results—one should not be surprised to see efforts in the
districts; maintain requirements related to the inclusion of ELLs in accountability
determinations, and, focus on “highly effective teachers” instead of “highly qualified”
teachers.

NCLB reports and studies released this year are summarized below.

**Center on Education Policy (CEP)**

In its latest report to monitor major changes to States’ educational accountability plans, *No Child
Left Behind at Five: A Review of Changes to State Accountability Plans*, the authors describe two
main findings of this latest review (Chudowsky, N. & Chudowsky, V., 2007, pp. 1-2):

- Many of the changes that States requested to their accountability plans this past year
  were related to meeting the deadline for implementing tests that fulfilled NCLB
  requirements by the end of school year 2005-06. The introduction of new testing
  programs or tests at additional grades meant that many States had to set new cut scores
  for proficient performance and revise their targets for adequate yearly progress. These
  changes were one reason why many States did not release information about the AYP
  status of schools and districts until well after the start of school year 2006-07. These
  delays created uncertainty about which schools and districts would have to undertake
  the improvement steps and interventions required by NCLB.

- The U.S. Department of Education continued in 2006 to approve changes to state
  accountability plans that in effect make it easier for schools and districts to demonstrate
  AYP. These changes include, among others, the adoption of confidence intervals,
  indexing systems, and more lenient policies for counting scores from retests. But the
  flexibility permitted by ED in 2006 does not break new ground. Rather, more States are
  copying changes that ED had already allowed in other States or are applying the
  adjustments and flexibility described in policy guidance issued by Education Secretary
  Margaret Spellings in 2005.

**PDK/Gallup Poll of American’s View on NCLB**

In this, the 39th annual PDK/Gallup poll of public opinions regarding the nation’s public school, the
findings seem to present an interesting contradiction—while the knowledge of respondents
increased regarding NCLB their confidence that the law is working as intended seems headed in
the opposite direction. Among the findings (Rose & Gallop, 2007):

- Only 1 in 4 Americans believe NCLB is helping their schools.
- More Americans now have an unfavorable (40%) of NCLB than a favorable one.
- More Americans would blame the law (49%) if large numbers of schools fail to meet the
  requirements than would blame the schools (41%).
- Eight in 10 Americans prefer that school effectiveness be measured by increases in
  student achievement than the current methods used to determine AYP.
- Nine in 10 Americans feel that NCLB has resulted in a narrower curriculum.
- Nearly 8 in 10 Americans believe that ELLs should be required to pass an English
  language proficiency test before their reading and mathematics test scores are used for
  AYP determinations.
- Nearly 5 in 10 Americans grade their community schools A or B and nearly 7 in 10 public
  school parents give schools their children attend А or B.

**National Longitudinal Study of NCLB**

This is a federally funded study of progress that States, school districts, and schools have made
in implementing NCLB’s accountability provisions. The report, *State and Local Implementation of
reauthorization directed at adding depth and rigor to States’ academic content and student academic
achievement standards.***
the No Child Left Behind Act, Volume II—Accountability Under NCLB: Interim Report, developed by researchers at RAND and the American Institutes for Research (Vernez, G., Birman, B. F., & Garet, M. S.), was presented to ED earlier this year. ED has not released the report and the pre-publication copy cannot be cited or used for attribution purposes.


In a paper published by AERA in July, researchers at the Policy Analysis for California Education (PACE), report the findings of their 12-State study of reading and mathematics test results from 1992 through 2006. The authors (Fuller, Wright, Gesicki, & Kang, 2007):

offer evidence on three barometers of student performance drawing from...[NAEP] and state data....Focusing on the performance of fourth graders where gains have been the strongest since the early 1970s, the authors find that earlier test score growth has largely faded since the enactment of NCLB in 2002. Gains in math achievement have persisted albeit at a slower rate of growth. Performance in many States continues to apparently climb. But the bar is set much lower in most States, compared to the NAEP definition and the disparity between state and federal results has grown since 2001. Progress seen in the 1990s in narrowing achievement gaps has largely disappeared in the post NCLB era. (p. 268)

Fuller, et al also noted that NCLB advocates have asserted that the law’s emphasis on educational reform has helped to increase student achievement; an assertion not supported in his examination of the related data. Cech (2007, August 1, p. 9), reporting on the study, noted that the Center on Education Policy (CEP) had released new research in June that found “consistent and significant increases in state-test scores since the legislation became law in 2002.” CEP examined student achievement solely on the basis of State tests. Cech also noted that an ED representative took issue with the 12-State study results stating that it is too early in the process to adequately know the law’s impact on student achievement.

RAND Study on NCLB Impact on Classroom Practice

Under the sponsorship of the National Science Foundation, researchers at the RAND Corporation have been surveying educators in California, Georgia, and Pennsylvania since 2002 to track the classroom impact of NCLB. Earlier this year, the researchers (Hamilton, Stecher, B. M., Marsh, J. A., McCombs, J. S., Robyn, A., Russell, J. Naftel, S. & Barney, H., 2007) presented their findings from the 2005-06 school year which marked the third and final year of this research. According to Debra Viadero, writing in an Education Week article (2007, June 20, p. 22):

- Two-thirds or more of superintendents and principals and 40 percent to 60 percent of teachers said that staff focus on student learning had improved as a result of the new accountability pressures but many also agreed that staff morale had declined.
- Teachers were more likely than the administrators, though, to pick up on problems or negative consequences with the testing-and-accountability systems in their States, such as a concern that state tests were misaligned with the curriculum. In middle school science, for example, the percentages of teachers reporting that kind of mismatch in the 2004-05 survey ranged from 63 percent in Georgia to 74 percent in California.
- While most teachers and administrators agreed that learning opportunities for struggling students had improved as a result of the law, half or more of teachers across the three States and all levels of schooling worried that high-achieving students were not receiving ‘appropriately challenging curriculum or instruction.’
AIR: Summary of State Strategies for Districts Identified for Improvement Under NCLB, July 2006

This brief by the American Institutes of Research, as a partner in the California Comprehensive Center at WestEd, reports on the strategies state education agency staff have developed for districts identified for improvement under NCLB.

Researchers found across the 16 States investigated, the design and delivery of district support varies depending on state capacity, district need, and state models for support. SEA support structures for districts identified for improvement include extensive systems focused at the district level as well as systems focused primarily at the school level. All of the States AIR interviewed utilize technical assistance strategies and/or tools to support areas such as data analysis, capacity building, or resource allocation to districts in need of improvement. Though support providers may be employed by various agencies including SEAs, regional centers, districts, universities, or non-profits, they are most often experts in professional development, data analysis, leadership, and curriculum and instruction support. Furthermore, the circumstances around the delivery of district support vary. Four States offer support and assistance to all districts, not just those identified for improvement under NCLB, to lessen the likelihood that districts are identified as needing improvement. Additionally, 10 of the 16 States AIR interviewed appear to employ a regional structure for providing technical assistance instead of a centralized system of support. The text of the report is available at http://www.ccsso.org/content/pdfs/CCR%20AIR%20state%20support%20districts.pdf.
APPENDIX D – State educational accountability workbook decisions by the U.S. Department of Education that changed between 2003 and 2007

<table>
<thead>
<tr>
<th>Topic</th>
<th>Original Decision</th>
<th>Final Decision(^{20}) and Year Changed</th>
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<tr>
<td>1. Dual accountability systems</td>
<td>Permitted only when a school could not achieve a high performance level on State system if it was identified for improvement under NCLB.</td>
<td>States can have dual systems that recognize school’s performance regardless of their AYP outcomes (2003).</td>
<td>ED approved used of the term, “Provisional AYP,” by a State as a category for schools ranking at the top of its accountability system but not making AYP under NCLB.</td>
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<td>Number of States using dual systems increases (2005 and 2006).(^{21})</td>
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<td>2. Out-of-level testing</td>
<td>Not permitted.</td>
<td>Permitted as an alternate assessment aligned to alternate standards and subject to 1% cap for SWDs reported at the proficient or higher level (2004).</td>
<td>Modified in Regulations adopted on December 9, 2003 (Federal Register). See Paige (2004, March 2) policy letter on SWDs.</td>
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<td>Prohibited as an alternate assessment based on “modified” achievement standards in regulations issued April 2007.</td>
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\(^{20}\) A State that would like to amend its plan based on these decisions would be required to submit a request for amendment to ED; that is, States cannot simply amend their plans without approval even if other States have been approved to make the same amendment.

\(^{21}\) See also Perie’s (2007, in press) paper on key elements for educational accountability models developed in 2007 for the ASR SCASS.
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<tr>
<td>3. <strong>Alternate assessments for SWDs</strong></td>
<td>Permitted but must be based on the State’s academic content and student academic achievement standards.</td>
<td>Alternate assessments based on alternate achievement standards permitted, but not more than 1% of total student population in the assessed grades can be counted as proficient in relation to the alternate standards (2004).</td>
<td>Modified in regulations adopted on December 9, 2003 (Federal Register). See Paige (2004, March 2) policy letter on SWDs.</td>
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<td>Alternate assessments based on modified achievement standards permitted, but not more than 2% of total school population (in addition to 1% above) can be counted as proficient in relation to the alternate standards (2005).</td>
<td>Announced by Secretary Spellings in April 2005 with guidelines issued May 10, 2005. Codified in regulations promulgated April 2007.</td>
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<tr>
<td>4. <strong>Use of first test score for AYP when students have multiple opportunities to take an assessment</strong></td>
<td>First test score counts for AYP determinations.</td>
<td>States may “bank” results when students afforded multiple opportunities to test provided an “official” point has been designated at which they are expected to have attained the tested standards (2003).</td>
<td>ED stated in comments with Regulations adopted on December 9, 2003 (Federal Register) that States have more flexibility toward this end than originally understood.</td>
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<td>ED approved a State’s request to count scores of students who re-test after either missing the original testing or who originally scored just below the passing score (2005).</td>
<td>ED clarified in a 2007 decision letter that a State may not include retesting results for high school assessments beyond the grade level for which the assessment is aligned to the State’s academic content standards.</td>
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<td>Delaware approved to recalculate AYP following summer school assessment “retakes (2006)” and Virginia to include retesting results for high school end-of-course assessments.</td>
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<tr>
<td>7. Identification for improvement</td>
<td>School or district missing any AYP target two consecutive years is identified for improvement.</td>
<td>School or district must miss any target in the same subject or the same other academic indicator in two consecutive years to be identified for improvement (2004).</td>
<td>ED has consistently denied States’ requests to base identification on the same target two consecutive years.</td>
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<tr>
<td>8. AYP decisions for school districts</td>
<td>Districts required to “roll up” data across schools for AYP determinations.</td>
<td>Districts may examine AYP outcomes by grade spans (elementary, middle, and high school) and then be identified for improvement only when the same content area target is missed in all spans for two consecutive years (2004). ED clarified in 2006 that missing OAI's must be factored in as well.</td>
<td>See Johnson (2006, March 7) letter to chief state school officers.</td>
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<tr>
<td>10. Full academic year extending beyond one calendar year for SWDs</td>
<td>Not permitted.</td>
<td>Full academic year for SWDs may extend beyond one year when IEP indicates that longer period is needed to collect achievement information (2004).</td>
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<tr>
<td>11. Graduation rate covering more than four years</td>
<td>Students taking more than four years to graduate could not be counted as graduates in calculating graduation rates.</td>
<td>SWDs who take more than four years to graduate, consistent with their IEPs may be counted as graduates (2004). ELLs who take up to six years to graduate, consistent with a local plan, may be counted as graduates (2005).</td>
<td>Tennessee approved (2007) to define standard number of years as five plus one summer session for early college/middle college high schools. Michigan received a similar approval in 2007.</td>
</tr>
<tr>
<td>12. Calculating percent proficient</td>
<td>Use number of students enrolled full academic year for the denominator.</td>
<td>Use number of students enrolled for a full academic year \textit{and tested} for the denominator (2004).</td>
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<td>14. Larger minimum n’s for school districts</td>
<td>Not permitted initially. In 2006, policy changed back to non-approval.</td>
<td>Models approved permitting the use of a minimum n which increases proportionally as the size of the district increases—subject to caps (2003). Not permitted in 2006.</td>
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<td>15. Uniform averaging</td>
<td>Uniform averaging required.</td>
<td>States permitted to apply “non-uniform” averaging such that schools and districts may use the scores from only current school year or average across up to three years, whichever benefits the school or district more (2003).</td>
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<td>16. Use of statistical tests for participation and graduation rates</td>
<td>Not permitted for “count” elements. In 2006, policy changed to non-approval for requests to increase CIs (e.g., 95% to 99%).</td>
<td>Permitted (2004). States have been allowed to apply confidence intervals (CIs) to AYP calculations in general. But when requests for CIs have been specifically around “count” items, they have been denied.</td>
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<td>19. Use of statistical tests in safe harbor reviews</td>
<td>Not permitted.</td>
<td>Use of a 75% confidence interval allowed (2004).</td>
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<td>20. Safe harbor reviews for small schools in percent proficient determinations</td>
<td>Unclear.</td>
<td>A State may conduct a review of current year and prior year performance even when its minimum n requirements are not met (2004).</td>
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<tr>
<td>21. Averaging for up to three years for safe harbor determinations in percent proficient determinations</td>
<td>Not permitted.</td>
<td>Permitted (2005). Percent not proficient would have to decline by 10% over one year, 19% over two years, and 27% over three years.</td>
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<td>23. Including scores for “exited” SWDs in student group AYP decisions</td>
<td>Not permitted with two exceptions—those for Georgia (2003) and South Carolina (2004).</td>
<td>In regulations promulgated in April 2007, States may now included exited SWDs in the student group for up to two years after receiving services.</td>
<td>The two-year limit may contradict IDEA provisions related to the provision of monitoring services to formerly served SWDs.</td>
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<td>24. Including scores for “exited” ELLs in the ELL student group AYP decisions</td>
<td>Required.</td>
<td>Permitted for up to two years after student no longer meets the definition of LEP under section 9101(25) consistent with the Secretary’s policy letter (2004). Codified in regulations issued September 2006.</td>
<td>See Paige (2004, February 20) policy letter on ELLs. States using Title IX definition of LEP could include such students for longer than two years.</td>
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<td>25. Use of scores for ELLs in AYP calculations</td>
<td>Required.</td>
<td>Recent arrivals in the U.S. may be exempted from one administration of a State’s reading or language arts assessments. As long as these students take an English language proficiency assessment, they may be counted as a participant. Recent arrivals cannot be exempted from a State’s mathematics assessments but scores may be exempted from one cycle of AYP determinations.</td>
<td>See Paige (2004, February 20) policy letter on ELLs. See also September 2006 regulations.</td>
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<tr>
<td>Topic</td>
<td>Original Decision</td>
<td>Final Decision and Year Changed</td>
<td>Comment</td>
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