

**Responses to August 6 Proposed USED Regulations
Call for Significant Changes in Final Regs,
Which Will Likely Occur in Certain Areas**

*A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT*

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Comments by various education and other groups in response to proposed USED regulations on Title I will likely result in significant changes in certain areas when final regulations are published, most likely in October. As noted in Title I Report, one Democratic House aide stated, "It's a political agenda. Instead of the bill being all about accountability they are making it all about choice." Because of the almost unanimity from disparate groups on certain issues calling for withdrawal of certain provisions thus allowing the statute to prevail without any regulations, changes will likely occur in the areas of choice, alternative assessments, supplemental services, and teacher qualifications in the final regs.

As noted in the August TechMIS Special Report on the proposed regulations, not more than .5 percent of all students in a district or in a state would be exempt from taking regular state tests or having their results reported. In addition, alternative assessments should be aligned with existing state standards. Perhaps the most critical comments came from the House Democratic Committee staff who were directly involved in drafting the legislation: "The standards movement has been focused on educating all children to the same standard, not multiple standards. In addition, what is the basis of the .5 cutoff? How was this number established? This cutoff should be eliminated and states should not be permitted to establish alternative standards." The Council for Exceptional

Children, while agreeing with the USED intent, commented that an unintended effect of this cap would be a defacto limit on students taking alternative assessments because states will find it is impossible to convert the scores on those tests to fit their regular accountability systems (Title I Report, September 2002). The National Center for Educational Outcomes felt that the .5 percent cap was too low, noting that the six states which allow only severely handicapped students to take alternative tests had rates of between .6 and .8 percent.

Another area in which there was a consensus related to ensuring that LEAs, which are under disaggregation plans, secure changes in their plans to permit public school choice. As the Democratic staff response noted, “They can be required to seek changes but not to ensure changes will be adopted. This provision should be stricken or replaced with language encouraging LEAs to seek changes. This provision also contradicts the Secretary’s letter of late June on the subject which encouraged LEAs to seek changes in their designation plans.”

As noted in our August TechMIS Special Report, proposed regulations relating to supplemental service providers would prohibit a state from requiring such providers to hire qualified staff and use scientifically-based research which is a requirement placed upon Title I schools. The Democratic Committee staff response questioned the basis for this prohibition: “Why prohibit a state from demanding that high-quality instructors provide supplemental services? If we are providing instruction on scientifically-based research in school, shouldn’t a child’s supplemental services also meet this threshold? These provisions should be struck and replaced with language requiring the use of highly-qualified teachers and scientifically-based research.”

Also related to supplemental services, as noted in the August TechMIS Special Report, proposed regulations would give states and districts the option of using 2001-2002 test scores as a basis for taking a school off the “improvement list” if these scores and the previous years’ scores indicated that the school met passing AYP criteria. On the other hand, the districts would not have to use the most recent scores to place a school on the “improvement list” if this year’s results indicated that this was the second consecutive year the school failed to meet AYP. The net effect of this would be to

reduce the number of schools targeted for improvement during the 2002-03 school year. Comments from the House Democratic group noted, “This provision permits LEAs to not identify schools which fail to make AYP for the second consecutive year based on their 2001-02 results. Why eliminate the need for LEAs to identify failures to make AYP on the 2001-02 assessments? This provision is arbitrary and should be stricken.”

Also related to supplemental services and targeted schools, the proposed regulations stated that, if a school is targeted for improvement based upon the most recent test results which were not available at the beginning of the school year, then the school must provide choice “immediately” and/or supplemental services by mid-year and this year would be counted as a full year for being targeted for improvement. As the Democratic aides group cited the Law, “Schools that are targeted for improvement after school begins must implement choice or supplemental services by the beginning of the next school year.” This rationale also supported by virtually all districts and state departments of education in their comments as many state assessment results are not available until the Fall after tests are given in the Spring. As the Democratic Aides Group noted, “The NPRN (proposed regulation) directly contradicts the statute and should be rewritten to reflect the statute.”

The proposed regulations would require districts to spend or hold in reserve 20 percent of their Title I funds to cover costs of transportation for transferring eligible students to another school under parent choice option or to provide supplemental services. The Democratic aides group comment states, “The statute states that the maximum an LEA is required to spend on supplemental services is five percent. This provision (in the proposed regulations) seemed to imply an LEA should spend funds above the statutory cap. This provision needs to be rewritten in plain English.” The law also states that an LEA with schools that have been targeted for improvement can spend an amount up to five percent of its Title I funds on related transportation. Both Democratic aides and virtually all of the district comments argued that the 20 percent reserve for transportation and supplemental services was in most cases unnecessary because of the low percentage of parents opting for student transfer and other reasons. This proposed regulation has also resulted in many districts not spending their initial 30 percent allocation of Title I funds allocated in July for this school year on products and

services because of the need to hold in reserve such funds for potential transportation costs (see related article in August TechMIS [Washington Update](#)). Even if the final regulations call for a reserve of 10 percent rather than 20 percent, much of the damage would have already been done in postponed purchases of products and services.

The proposed regulations clearly stated that schools which have been targeted for improvement for the first time (i.e., failing to meet AYP for two consecutive years), must allocate 15 percent of their budget specifically for staff development; in addition, all Title I schools would be required to use at least five percent of their funds for staff development unless districts can clearly document that “most” of its teachers and aides are already adequately trained. However, the House Democratic aides group noted, “This provision (in the proposed regulations) specifically exempts LEAs from using funds for teacher and paraprofessional development when most teachers and paraprofessionals meet the requirement of the statute. This regulation makes no sense even in instances when most teachers in a state or district meet the qualifications, individual schools could have high percentages of teachers who do not.”

To the extent the draft regulations more clearly reflect the intent of the Law as stated in statute, the following is likely to occur with implications for some TechMIS subscribers.

- If the school district’s proposed opt-in/opt-out provisions are removed, the number of schools targeted for improvement, which have to provide parent choice and/or supplemental services, is likely to increase; but, the question remains, where schools are identified in mid-year using the most current test results, when will the effective implementation date be?
- The cost of supplemental services to districts will likely be greater and the range of supplemental service providers that have scientifically-based program will be smaller, if states can set standards regarding the use of highly-qualified teachers and scientifically-based products in the selection and in the approval of supplemental service providers.
- If the .5 percent cap on students who can take alternative tests and are exempted from being reported in state AYP calculations is raised to, for example, one percent, demand for products and services which can aid in ensuring that special education students and LEP students pass regular state assessments is somewhat diminished, but certainly higher than the situation two years ago.

- If the proposed 20 percent reserve for transportation and supplemental services in affected districts is reduced to ten percent, then more Title I funds will be released sooner for purchasing other instructional products and services.
- The final regulations might define “most” teachers more rigorously than the proposed regulations and require LEAs to document clearly that a certain high percent of teachers and aides meet the new high qualification requirements. Current projections calling for the minimal level of approximately \$600 million to be allocated for staff development under Title I alone are likely to be validated; this amount does not include the 15 percent allocated for schools targeted for improvement (i.e., between 5,000-7,000 schools) for the first time --- good news for groups providing professional development.

One thing clear from comments on the proposed regulations by both Senate and House Education Committee staffers is that they are upset with the Administration’s using the regulatory process to attempt to change the Law on issues such as teacher quality, supplemental services, choice, and earmarked allocations of Title I funds. During the Committee for Education Funding Gala on September 17, a leading Democrat on the House Education Committee noted that, in both the Senate and House, oversight groups had been created who communicate periodically with each other in preparing critiques, reprimands, etc. to USED for intentionally or otherwise misinterpreting Congressional intent of the statute. We also discussed the unintended consequence of the constantly changing USED interpretations of regulations and guidance which create uncertainty among districts and schools to the extent they are postponing spending Federal funds; this results in market paralysis. If any TechMIS subscriber has examples of conflicting guidance being provided by USED regional offices or SEAs in areas affecting sales of different types of products, please let Charles Blaschke know directly.