

A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT

Prepared by:
Education TURNKEY Systems, Inc.
256 North Washington Street
Falls Church, Virginia 22046-4549
(703) 536-2310 / (703) 536-3225 FAX

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**Proposed Title I Regulations Could Have Significant Implications for
Marketing and Sales Strategies to Maximize Sales This Year From Title I
Market Niche**

On August 6, USED published proposed regulations on many aspects of the new Title I Law that were not addressed in the July proposed regulations regarding assessments and accountability. Some of these new proposed regulations and interpretations have direct implications for targeting and positioning products and services for certain types of Title I schools.

The August 6 proposed regulations would give administrators at both the LEA and SEA levels the “option” of using 2001-02 assessment results to determine what schools would be targeted for improvement. For example, a school that had been targeted for improvement in 1999-2000, but met Adequate Yearly Progress (AYP) criteria in 2000-01 and again on the 2001-02 state assessment, could be removed from targeted status. Also, the SEA and LEA would have the choice of adding or not adding to the list of targeted schools a school that failed to make AYP for the second time on those 2001-02 assessments. Many SEAs are attempting to do this with the net effect of removing some schools from the targeted list and not adding others. Hence, the number of schools targeted for improvement will likely be significantly lower than if SEAs and districts followed a strict interpretation of the Law regarding targeting. This option is likely to increase the number of schools that have been failing for one and two years (i.e., newly targeted) and reduce the number failing for three consecutive years, which would have to provide not only choice but also supplemental services.

Without question, schools that have been failing for two consecutive years should become a priority target for a number of reasons, including: (a) the targeted school will likely be making changes, such as creating an afterschool program to convince parents not to transfer their Title I eligible children to other schools; (b) as clarified in the proposed regulations, a district must set aside at least 15 percent of a school's budget to provide professional development; and (c) there is a direct incentive on the part of the school to purchase new, effective materials to improve student performance in order not to be required to provide supplemental services the following year. Likewise, there is an incentive for the district to ensure schools failing for one year, such as those in Florida, Texas, and New Jersey, meet AYP criterion and not have to be targeted for improvement next year.

If a district has one or more schools failing for three consecutive years, the regulations state "LEAs must spend an amount equal to 20 percent of their allocation under Subpart A of this part to pay for choice-related transportation, supplemental education services, or a combination of the two." However, the Law states that transportation costs must be paid out of Title I for a child transferred under the choice option to another school; however the Law also states that a district may, if it wishes, cover the cost of transportation for students who receive supplemental services from a provider at another site selected by the parent. In certain districts with large numbers of targeted schools, the likelihood is high that much of the initial 30 percent of a district's allocation being made this summer will be put into the Title I district-level reserve fund thereby causing deferral of many purchases until the remainder of the funds are available in November. On the other hand, districts which already have in effect a general choice option for parents and currently are providing across-district transportation at no cost to the parent will likely: (a) hold in reserve a much lesser amount to cover the cost of supplemental services, if necessary; and/or (b) maintain the 20 percent in the district reserve fund and most likely make district-level purchases of products and services next Spring with unspent funds. Hence, targeting "choice" districts -- such as Hillsborough County (Florida), Milwaukee (Wisconsin), and others -- either now or next Spring, could be very profitable.

The new proposed regulations provide some relief with regard to the Law's mandate that only "highly qualified" teachers can be hired after the second day of school in September 2002. The

definition of “highly qualified” teachers would apply only to teachers who are hired to teach core academic subjects; it does not apply to many vocational education teachers. While “provisional” certification would not meet the new teacher quality standards, an otherwise qualified new teacher who is on a “probationary” status during his or her first year of teaching would be allowed; and, a teacher successfully making measured progress in an “alternative certification route” program sponsored by the state would also be considered “highly qualified.” While all newly hired teachers in a Title I schoolwide program would have to be “highly qualified,” only those paid for by Title I funds in a Targeted Assistance School would have to be so qualified. (See related [Washington Update](#) item.) An instructor who is employed by a supplemental service provider which provides instruction to eligible students, does not have to meet the rigorous requirements of being “highly qualified.” And an aide who meets the quality requirements would be allowed to provide instructional tutoring to students in an afterschool setting under the direct supervision of a highly qualified teacher. The proposed rules reaffirm that supplemental services must be provided after school. An approved provider must provide, with some “reasonable accommodations,” instructional services for a student with a disability as long as the instruction is designed to meet the individual needs of the student as described in the student’s IEP.

The regulations indicate that a state “may not require a service provider to document that its instructional strategies include scientifically-based research.” This means that, ironically, providers of supplemental services, while having to be approved by the state and included on its list, do not have to meet some of the rigorous standards regarding hiring and instructional strategies that are placed upon Title I schools.

The proposed regulations would allow only up to one half of one percent of all students to take alternative state assessments; this goes beyond the 1997 IDEA legislation. This alternative would be focused on cognitively-impaired students for whom different proficiency levels would apply in determining AYP. It is likely that many more special education students will be taking regular state assessments. In states where exit exams must be passed for students to receive a regular high school diploma, there should be a significantly increased demand for instructional products and services that can increase the passage rate of special education students. Under the

1997 IDEA, parents of students who graduate without regular high school diplomas can demand that the district continue providing services until age 22, at significant cost to the district.

Finally, in a related proposed rule, states would be allowed to decide how to define “graduation rates” which the Law mandates be included as one measure in determining AYP. Also, states would be able to decide how to determine whether schools in which no grade level is included in the state assessment have met AYP requirements. Very few states currently include grades K-2 in their Title I assessments. States could either select and administer new assessments in K-2 or allow districts to select from an array of such assessment instruments. This should generate high demand for many new early childhood assessment products and services, including teacher observation scales. For a copy of proposed regulations go to: www.ed.gov/legislation/FedRegister/proprule/2002-3/080602a.html.