Colorado Department of Education (CDE)
Comments on
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Department of Education
34 CFR Parts 200 and 299
RIN 1810-AB27
[Docket ID ED-2016-OESE-0032]

The Colorado Department of Education (CDE) submits the following comments on the U.S. Department of Education (USDE), Notice of Proposed Rule-Making (NPRM), on the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Every Student Succeeds Act (ESSA) – Accountability and State Plans, [Docket ID ED-2016-OESE-0032], published on May 31, 2016.

Credentials of Commenters: As the agency responsible for developing the state's plan for implementing the ESSA, in consultation with stakeholders, CDE has experience with past ESEA reauthorizations and plan development under former reauthorizations, knowledge, local context, and historical background on the Colorado educational system and students within it, and is therefore in the position to comment on the impact of the proposed rules on Colorado's educational systems, the state's plans and accountability systems.

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General Comments					
Executive Summary	**Comment on Executive Summary** **Proposed rules provide limited or minimal clarification of statute and contradict the stated intent of the proposed rules.** The ESSA was intended to provide state educational agencies (SEAs) and local educational agencies (LEAs) discretion to design an accountability system and a state plan that is most likely to meet the needs of students and schools identified for support. The Executive Summary of the NPRM declares and emphasizes within the reasons for the rules that these regulations are proposed "to provide clarity and support" as states, LEAs and schools develop implementation plans. As such, these proposed rules should provide clarification where statute is ambiguous or unclear. However, many of the proposed rules merely restate the statute, often duplicating exact language and missing opportunities to reduce ambiguity. Certain sections of the ESSA are ambiguous or conflict with other sections of the statute. States would have benefited from proposed rules or non-regulatory guidance that would have clarified such ambiguity. For example, it would be helpful to get clarity and support on how to reconcile the need to meet reporting requirements and yet protect personally identifiable information (would one trump the other?) or how to reconcile the conflicting statutory language on participation versus parent opt-out language. **Suggested Alternative:** Minimize duplications of statutory language. Only provide clarification and support where there is ambiguity in the statute. Only propose regulations that meet the intent of supporting schools,	Stated intent of the proposed rules based on quote from the NPRM: "We are proposing these regulations to provide clarity and support to State Educational Agencies, Local Educational Agencies, and schools as they implement the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act— particularly, the Elementary and Secondary Education Act requirements regarding accountability systems, State and Local Educational Agency report cards, and consolidated State plans— and to ensure that key requirements in title I of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, are implemented consistent with the purpose of the law: ''to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.''" Example of duplicative language in the proposed rules from the ESSA: "Proposed §200.13 would require each State to ---" o "Establish ambitious long-term goals and measurements of interim progress for graduation rates that are based on the four-year adjusted cohort graduation rate…" o "Use the same multi-year timeline in setting long-term goals for academic achievement and graduation rates for all students and for each subgroup…."	34540	3	NA

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	LEAs and SEAs. Remove any proposed rules that increase requirements or restrict states' flexibility afforded under the ESSA.				
Costs and Benefits Section	**Comment on Costs and Benefits Section** **Benefits listed in the *Costs and Benefits* section of the NPRM are benefits of the statute, not the proposed rules, and the statements that they increase flexibility and reduce complexity and costs is unsubstantiated.** Executive Order 13563 specifies that regulations must have benefits that outweigh the costs. The Regulatory Impact Analysis states that benefits of implementing the proposed rules outweigh the costs due to the reduced burden resulting from elimination of Adequate Yearly Progress (AYP), Supplemental Educational Services (SES), and requirements for identifying schools for improvement, restructuring, etc., all of which are eliminated by the ESSA and not the proposed rules. The proposed rules add additional requirements for states, but do not eliminate any requirements that have not already been eliminated by the ESSA. Furthermore, the proposed rules reduce flexibility afforded to states in the ESSA by adding requirements where the statute has explicitly rendered the determination to states, increase complexity for accountability systems by specifying requirements, and increase expenses to states by creating additional calculation, weighting, and analysis requirements, as well as additional expenses for collecting and reporting data, while still ensuring data privacy. Although some hours for the initial work are accounted for in the projections, the estimates are unreasonably low. For example, 20 hours are allotted for reviewing a LEA plan. The projected estimates in the NPRM do not reflect the ongoing work associated with requirements, such as work required to prepare for and conduct the collection of plans, provide trainings for LEAs on the development and submittal of plans, build templates or formats for the plans, negotiate revisions to the plan as needed across the years, etc. Furthermore, the NPRM discussion of estimates oscillates back and forth in discussing LEA and school plans. Under these rules SEAs would be required to review both LEA and school level plans. The calculations do not account for the need to review both types of plans, provide feedback, negotiate revisions and converse with LEA sand school personnel to ensure plans meet the needs of all students, etc.	"The Department believes that the benefits of this regulatory action outweigh any associated costs to State Educational Agencies and Local Educational Agencies, which would be financed with grant funds. These benefits would include ***a more flexible, less complex and less costly accountability framework*** for the implementation of the Elementary and Secondary Education Act that ***respects State and local decision- making***; the efficient and effective collection and dissemination of a wide range of education-related data that would inform parents, families, and the public about the performance of their schools and support State and local decision-making; and an optional, streamlined consolidated application process that would promote the comprehensive and coordinated use of Federal, State, and local resources to improve educational outcomes for all students and all subgroups of students." (***emphasis added***)	34541	1	NA
Comments on Specific Proposed Rules					
200.12	**Comment on §200.12:** **Proposed rule adds additional requirement that has no basis in statute and exceeds the Secretary's authority.** The ESSA requires a statewide accountability system, not a "single" accountability system. Under section (a)(1) of proposed rule 200.12, states must describe how a "single" accountability system	Language from the ESSA Section 1111(c)(1): IN GENERAL. –Each state plan shall describe a statewide accountability system that complies with the requirements of this subsection and subsection (d).	34597	3	(a)(1)

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	will be implemented no later than 2017-18, which is an overreach of the Secretary's authority. Statutory language in the ESSA does not include the provision to have a single system. For some states, conflicts between state and federal statutes might require two, albeit significantly overlapping, accountability systems**.** **Suggested Alternative** Remove additional requirements from the proposed rules that have no basis in statute. Remove the word "single" from proposed rule 200.12(a)(1). In non-regulatory guidance, provide supports and direction on how to reconcile conflicts between the ESSA and state policy, if they exist, to reduce the likelihood of schools being identified under two systems.				
200.13	**Comment on §200.13** **Proposed rule restricts states' flexibility and adds additional requirements that are not in statute.** Section (c) of proposed rule 200.13 requires that the English language proficiency measure must set expectations that each English Learner (EL) will make annual progress toward attaining English **and** attain English proficiency within a period of time. In section 1111(c)(4)(B)(iv) of the ESSA, statute requires the measurement of progress in achieving English language proficiency, as defined by the state. Imposing additional requirements limits the state's flexibility in determining how progress shall be measured. **Suggested Alternative** Remove proposed rule 200.13 and allow states to define progress towards proficiency, as intended by the statute.	Language from the ESSA Section 1111(c)(4)(B)(iv): (iv) For public schools in the State, progress in achieving English language proficiency, as ***defined by the State*** and measured by the assessments described in subsection (b)(2)(G), within a ***State-determined timeline*** for all English learners… (***emphasis added***)	34598	2	(2)
200.14	**Comment on §200.14** **Proposed rules significantly restrict states' flexibility and impose minimum requirements that may or may not be in the best interest of students and schools.** Section (b)(1)(i) of proposed rule 200.14 requires that reading and math be weighted the same, which is not specified in statute. Section (c) of proposed rule 200.14 requires the same minimum number to be used for all measures and indicators. This limits the ability to base the minimum numbers on what is statistically sound for various indicators and measures by requiring states to set one minimum for all indicators.	Language from the ESSA Section 1111(e)(1)(B)(iii)(IV): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – the weight of any measure or indicator used to identify or meaningfully differentiate schools, under this part. Language from the ESSA Section 1111(e)(1)(B)(iii)(V): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – the specific methodology used by States to meaningfully differentiate or identify schools under this part.	34598 34599	3 1	(b), (c), (d)

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	Section (d) of proposed rule 200.14 adds the language that "supported by research that performance or progress on such measures is likely to increase students' achievement…or graduation rates." **Proposed rule is not consistent with proposed rule 200.13.** Proposed rule 200.13(c) requires that the progress towards achieving English language proficiency include both annual progress towards achieving proficiency ***and*** attaining proficiency within a given time. However, proposed rule 200.13(b)(4)(iv) states that measurement of progress "may" also include attainment. **Proposed rule is an overreach of the Secretary's authority based on the prohibition under Sections 1111(e)(1)(B)(iii)(IV) and (V) of the ESSA.** Determining how indicators are weighted and thoughtfully inform school differentiation should be left to states to determine. Imposing additional requirements restricts the states' flexibility intended in statute and overreaches the Secretary's authority. **Suggested Alternative** Align proposed rule 200.13 to proposed rule 200.14 regarding English language proficiency metrics. Remove any language from proposed rules regarding the weighting of indicators, research requirements, and minimum numbers to comply with statutory prohibitions.		34599	1	(iv)
200.15	**Comment on §200.15** **Proposed rule significantly restricts states' flexibility and imposes requirements that are an overreach of the Secretary's authority based on the prohibition under section 1111(e)(1)(B)(iii)(XI) of the ESSA.** Under section 1111(c)(4)(E)(iii) of the ESSA, SEAs must explain how the ***state*** will factor participation into the statewide accountability system. However, section (b)(2) of proposed rule 200.15 prescribes the outcomes for schools that fail to meet the 95% participation requirement. Although the proposed rule includes a fourth option of State-determined action, the rule regulates this option by requiring it to be as rigorous as the previous, delineated options. Further, section (c) of proposed rule 200.15 requires schools to develop an improvement plan if participation targets are missed. Statutory language was intended to provide states with flexibility to factor participation into their accountability systems. **Suggested Alternative**	Language from the ESSA Section 1111(c)(4)(E)(iii) and proposed rule 200.15 regarding outcomes for schools with low participation: Section 1111(c)(4)(E)(iii) requires that States "provide clear and understandable explanation of how the ***State*** will factor" low participation in the statewide accountability system. However, proposed rule 200.15 specifies outcomes for schools with low participation: "(1) assign a lower summative rating to the school…(2) assign the lowest performance level on the state's Academic Achievement Indicator…(3) identify the school for targeted support and improvement… or (4) another equally rigorous State-determined action…that will result in a similar outcome for the school…." (***emphasis added***) Language from the ESSA Section 1111(e)(1)(B)(iii)(XI): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – the way in which the State factors the requirement under subsection (c)(4)(E)(i) into the statewide accountability system under this section.	34599	2, 3	(b), (c)

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	Remove proposed rule 200.15 and provide direction regarding schools failing to meet the 95% participation rate in non-regulatory guidance. **Particular Issues for Comment** The NPRM requests specific comment on "Whether we should include additional or different options, beyond those proposed in this NPRM, to support States in how they can meaningfully address low assessment participation rates in schools that do not assess at least 95 percent of their students, including as part of their State-designed accountability system and as part of plans schools develop and implement to improve, so that parents and teachers have the information they need to ensure that all students are making academic progress." **Response**: All options should be removed from the proposed rules and moved to guidance. Outcomes for schools failing to meet the 95% participation rate should be left to states to determine, in consultation with stakeholders, as local context is extremely important for determining the correct policy path to lead to meeting the 95% participation requirement.				
200.16	**Comment on §200.16** **Proposed rule restricts intended state flexibility and imposes additional requirements, increasing burden.** Section (a)(2)(ii) of proposed rule 200.16 introduces the term "each" in front of "major racial and ethnic groups," which is not included in statute. The inclusion of this term restricts states' flexibility to be able to use a "minority" subgroup, which includes all major racial and ethnic groups. **Suggested Alternative** Remove the term "each" from proposed rule 200.16(a)(2)(ii).	Language from proposed rule 200.16: (a) In general. In establishing long-term goals and measurements of interim progress under § 200.13, measuring performance on each indicator under § 200.14, annually meaningfully differentiating schools under § 200.18, and identifying schools under § 200.19, each State must include the following categories of students consistent with the State's minimum number of students under § 200.17(a)(1): (1) All public school students. (2) Each of the following subgroups of students, separately: (i) Economically disadvantaged students. (ii) Students from ***each*** major racial and ethnic group. (iii) Children with disabilities, as defined in section 8101(4) of the Act. (iv) English learners, as defined in section 8101(20) of the Act. (***emphasis added***) Language from the ESSA Section 1111(c)(2): In this subsection and subsection (d), the term 'subgroup of students' means— (A) economically disadvantaged students; (B) students from major racial and ethnic groups; (C) children with disabilities; and (D) English learners.	34600	1	(a)(2)(ii)
200.17	**Comment on §200.17**	Language from proposed rule 200.17(a)(2):	34601	1	(a)(2)

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	Proposed rule contains statements that have no basis in statute, restricts states' flexibility and is an overreach of the Secretary's authority based on the prohibition under section 1111(e)(1)(B)(iii)(VIII) of the ESSA. Section 1111(c)(3) of the ESSA requires the minimum number of students to be statistically sound and protect personally identifiable information (PII). Although Section 1111(c)(3)(A) of the ESSA requires that the state-determined minimum number be the same for "for all students and for each subgroup of students in the State," it does not indicate that the minimum number must be the same across all indicators. The additional requirement in proposed rule 200.17(a)(2) that SEAs must use the same minimum number for all indicators limits state's flexibility and ability to use statistically sound and protective minimums that may vary across indicators. States should be allowed to determine the minimum number that is appropriate for each indicator. Further, proposed rule 200.17(a)(2)(iii) regulates the minimum number to not exceed 30 students, a limit not reflected in statute. As long as the state can demonstrate that the number is statistically sound and protects PII, the state should not bear the additional burden of justifying the minimum number used. Finally, proposed rule 200.17(a)(2) violates the statutory prohibition against the Secretary to prescribe a minimum number of students established by a state under each subsection. **Suggested Alternative** Remove proposed rule 200.17(a)(2) and provide recommendations for the minimum and maximum number of students in non-regulatory guidance rather than regulation. **Comment** **Proposed rule contains statements that have no basis in statute and increase the burden on states.** Proposed rule 200.17(a)(3)(ii) requires the state to explain how other components of the statewide accountability system interact with the state's minimum number of students "and ensure the maximum inclusion of all students and each student subgroup." This requirement exceeds the state plan requirements in statute and unnecessarily increases the burden on the State. **Suggested Alternative** Remove proposed rule 200.17(a)(3).	Such number-- (i) Must be the same number for all students and for each subgroup of students in the State described in §200.16(a)(2); (ii) Must be the same number for all purposes of the statewide accountability system under section 1111(c) of the Act, including measuring school performance for ***each indicator*** under § 200.14; (iii) Must ***not exceed 30 students***, unless the State provides a justification for doing so in its State plan under section 1111 of the Act consistent with paragraph (a)(3)(v) of this section (***emphasis added***) Language from the ESSA Section 1111(e)(1)(B)(iii)(VIII): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – provided that the State meets requirements in subsection (c)(3), a minimum number of students established by a State under such subsection.	34601	1	(a)(3)

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200.18	**Comment on §200.18** **Proposed rule increases the burden for states, is not reflective of the statute, restricts states' intended flexibility and is an overreach of the Secretary's authority based on the prohibition under section 1111(e)(1)(B)(iii) of the ESSA.** Proposed rule 200.18, which delineates criteria for how states can demonstrate substantial weights for certain indicators, exceeds the requirements in the statute, creates additional burdens on states and encroaches on states' rights to develop exit criteria for identified schools. Adding a requirement on how indicators should be weighted is in conflict with the prohibitions under section 1111(e)(1)(B)(iii)(IV) of the ESSA. Section (b) of proposed rule 200.18 requires the state to include at least three distinct levels of school performance for each indicator, which is not reflected in statutory language. Further, subsection (5) treats the 95 percent participation requirement as an indicator for purposes of annual meaningful differentiation. While the state is required, under section 1111(c)(4)(E)(iii) of the ESSA, to explain how the 95 percent participation requirement will be factored into the statewide accountability system, it is not treated as an indicator within the statute. Therefore, it is inappropriate to include this provision within this section of the proposed rules. Section (c)(3) of proposed rule 200.18 also contradicts ESSA by expanding the requirements in statute related to the "other" indicator to all indicators. Section (d) of proposed rule 200.18 imposes rules on how states should differentiate schools, which is prohibited by section 1111(e)(1)(B)(iii)(V) of the ESSA. There are concerns regarding how these requirements for inclusion in the state plan will be evaluated as part of the state plan approval process, and whether the process for evaluation is consistent with the prohibitions under section 1111(e)(1)(B) of the ESSA. **Suggested Alternative** Remove subsections of proposed rule 200.18 that are prohibited under the ESSA, including assigning weights to indicators and imposing requirements on how to differentiate schools.	Language from the ESSA Section 1111(e)(1)(B)(iii)(IV): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – the weight of any measure or indicator used to identify or meaningfully differentiate schools, under this part. Language from the ESSA Section 1111(e)(1)(B)(iii)(V): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – the specific methodology used by States to meaningfully differentiate or identify schools under this part.	34601 34602 34602 34602 34602	3 1 1 1 2	(b) (d) (c)(3) (d)(3) (e)(3)
200.19	**Comment on §200.19** **Proposed rule imposes an unreasonable timeline and adds requirements that do not have a basis in statute.** ESSA statutory language does not require the lowest performing 5% to be identified at the elementary, middle, and high school levels. However, section (a)(1) of proposed rule 200.19	Language from the ESSA Section 1111(d)(3)(A)(i)(II): CONTINUED SUPPORT FOR SCHOOL AND LOCAL EDUCATIONAL AGENCY IMPROVEMENT. — To ensure continued progress to improve student academic achievement and school success in the State, the State educational agency— shall— establish statewide exit criteria for— schools described in paragraph (2)(C), which, if not satisfied ***within a State***	34602	2,3	(a), (b), (c)

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	specifies the breakdown at each level. Section (a)(2) also adds requirements not reflected in statute by adding the requirement that high schools are identified by the four-year adjusted cohort rates, whereas the statute allows for use of extended-year adjusted cohort graduation rate at the state's discretion. Section 1111(d)(3)(A)(i)(II) of the ESSA states that, after a state-determined number of years, schools with consistently low-performing subgroup(s) must be identified for comprehensive support. However, proposed rule 200.19(a)(3) limits the number of years to no more than three years. Sections (b) and (c) of proposed rule 200.19 specify requirements for differentiating schools, which is also prohibited by section 1111(e)(1)(B)(iii)(V) of the ESSA. Finally, section (d)(2) of proposed rule 200.19 includes the requirement to identify schools for comprehensive and targeted support by the beginning of each school year, beginning with the 2017-2018 school year. This rule imposes an unreasonable timeline upon states. **Suggested Alternative** Remove provisions within proposed rule 200.19 that have no basis in statute and modify timeline for identification to one that is feasible for states with which to comply. Provide direction regarding the identification of schools in non-regulatory guidance. **Particular Issues for Comment** The NPRM request specific comment on "Whether the suggested options for States to identify ''consistently underperforming'' subgroups of students in proposed § 200.19 would result in meaningful identification and be helpful to States; whether any additional options should be considered; and which options, if any, in proposed § 200.19 should not be included or should be modified." Response: Remove proposed rule 200.19.	***determined number of years***, shall, in the case of such schools receiving assistance under this part, result in identification of the school by the State for comprehensive support and improvement under subsection (c)(4)(D)(i)(III). (***emphasis added***) Language from the ESSA Section 1111(e)(1)(B)(iii)(V): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – the specific methodology used by States to meaningfully differentiate or identify schools under this part.	34603	1	(d)
200.20	**Comment on §200.20** **Proposed rule does not have basis in statute.** Under subsection (a) of proposed rule 200.20, states are directed how to establish a uniform procedure for averaging data for the purpose of meeting requirements of proposed rule 200.18. The ESSA statutory language does not address the averaging of data and these decisions should remain with states.	Language from the ESSA No language within the statute that addresses averaging data.	34603	2	(a)

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	Suggested Alternative Remove proposed rule 200.20(a) and provide direction on the averaging of data in guidance.				
200.21	**Comment on §200.21** **Proposed rule imposes additional requirements on SEAs, where the statutory language renders flexibility to states by the use of the phrases such as, "States may."** Section (a) of proposed rule 200.21 imposes unreasonable timelines for SEAs to notify LEAs serving schools identified for comprehensive support and improvement by the beginning of the school year. Because schools identified for comprehensive support and improvement are permitted to use the allotted first year of identification as a planning year, requiring the SEA to notify the LEA by the beginning of the school year is unreasonable. **Suggested Alternative** Remove proposed rule 200.21(a). **Comment** **Proposed rule adds requirements to statutory language which increase the burden on LEAs.** Section 1111(d)(1)(B) of the ESSA requires that LEAs "locally develop and implement a comprehensive support and improvement plan for the school to improve student outcomes…." However, section (b) of proposed rule 200.21 requires LEAs to provide "prompt notice to parents of each student enrolled in the identified school, including, at a minimum, the reason or reasons for the school's identification and an explanation for how parents can be involved in developing the plan." While statute requires the LEAs to partner with parents in the development and implementation of the plan, providing "prompt" notice is not required by statute. Further, concerns exist surrounding the use of the term "prompt" and how this will be defined and evaluated. **Suggested Alternative** Remove proposed rule 200.21(b) and provide direction regarding the LEA's partnership with parents in guidance. **Comment** **Proposed rule restricts states' flexibility in multiple ways and is an overreach of the Secretary's authority based on the prohibition under section 1111(e)(1)(B)(iii) of the ESSA.** Section 1111(d)(3)(A)(i) of the ESSA specifies that the exit criteria for schools "shall" be established by states. However, proposed rule 200.21(f) sets minimum criteria that states must	Language from the ESSA Section 1111(d)(1)(B): …locally develop and implement a comprehensive support and improvement plan for the school to improve student outcomes…. Language from the ESSA Section 1111(d)(3)(B): Statute offers flexibility to states in how the State Educational Agency provides continued support to schools and Local Educational Agencies by stating that the State Educational Agency ***may -- "***consistent with State law, establish alternative evidence based State determined strategies that can be used by local educational agencies to assist a school identified for comprehensive support and improvement under subsection (c)(4)(D)(i)." (***emphasis added***) Language from the ESSA Section 1111(e)(1)(B)(iii)(VII): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – exit criteria established by States under subsection (d)(3)(A)(i). Language from the ESSA Section 1111(d)(3)(A)(i): …schools identified by the State for comprehensive support and improvement under subsection (c)(4)(D)(i), which, if not satisfied within a State-determined number of years (not to exceed four years), shall result in more rigorous ***State-determined action***, such as the implementation of interventions (which may include addressing school-level operations). (***emphasis added***)	34603 34604	3 3	(a), (b) (f)

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	use. Changing the flexible statutory language "may" to the proposed rule language "must" is an overreach of the Secretary's authority based on the prohibition under section 1111(e)(1)(B)(iii)(VII) of the ESSA. Further, section (f)(2) of proposed rule 200.19 also imposes an additional requirement for schools that does not meet the exit criteria to conduct, at a minimum, a new comprehensive needs assessment. Section 1111(d)(3)(A)(i)(I) of the ESSA indicates that the state will determine more rigorous actions for schools that do not meet the exit criteria. Therefore, such supports and interventions should be determined by the states. **Suggested Alternative** Remove proposed rule 200.21(f) and provide direction regarding exit criteria, including suggestions for schools that do not meet exit criteria, in non-regulatory guidance.				
200.22	**Comment on §200.22** **Proposed rules have no basis in statute and create conflict between SEA and LEA requirements that would otherwise not exist.** Section (b) of proposed rule 200.22 requires the LEA to "promptly notify" parents of students enrolled in schools identified for targeted support and improvement. While statute requires the LEAs to partner with parents in the development and implementation of the plan, providing "prompt" notice is not required by statute. Further, concerns exist surrounding the use of the term "prompt" and how this will be defined and evaluated. Section (e) of proposed rule 200.22 requires the ***LEA*** to establish exit criteria for schools identified for targeted support and improvement. This proposed rule, not identified in statute, could create potential problems between states and LEAs. If the state identifies a school for targeted support but the LEA's exit criteria determines that the school should no longer be identified, a conflict arises in ensuring alignment between LEA and SEA exit criteria and identification criteria. Thus, sections (e) and (f) of proposed rule 200.22 appear to counteract one another. **Suggested Alternative** Remove sections (b) and (e) from proposed rule 200.22. Move guidelines regarding the LEA's partnership with parents to non-regulatory guidance.	Language from the ESSA Section 1111(e)(1)(B)(iii)(VII): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – exit criteria established by States under subsection (d)(3)(A)(i). Language from the ESSA No language within the statute requires LEAs to establish exit criteria.	34605 34606	2, 3 2	(b) (e)(f)
200.23	**Comment on §200.23**	Language from the ESSA Section 1111(d)(3)(A)(i):	34607	1	(c)

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	Proposed rule restricts state and LEA flexibility and adds requirements that are not in statute and are an overreach of the Secretary's authority based on prohibitions in the ESSA Section 1111(e)(1)(B)(iii)(VI). Section (c) of proposed rule 200.23 specifies interventions that the ESSA authorized to be state-defined. Furthermore, prescription of interventions or improvement strategies by the Secretary is prohibited by the ESSA Section 1111(e)(1)(B)(iii)(VI). **Suggested Alternative** Remove section (c) of proposed rule 200.23. Move guidelines to non-regulatory guidance.	…schools identified by the State for comprehensive support and improvement under subsection (c)(4)(D)(i), which, if not satisfied within a State-determined number of years (not to exceed four years), shall result in more rigorous ***State-determined action***, such as the implementation of interventions (which may include addressing school-level operations). (***emphasis added***) Language from the ESSA Section 1111(e)(1)(B)(iii)(VI): Nothing in this Act shall be construed to authorize or permit the Secretary -- as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to – prescribe – any specific school support and improvement strategies or activity that State or local educational agencies establish and implement to intervene in, support, and improve schools and improve student outcomes under this part.			
200.24	**Comment on §200.24** **Proposed rule does not have a basis in statute, restricts states' intended flexibility and imposes fiscally difficult minimums.** Proposed rule 200.24 imposes minimum funding requirements that are not feasible for Colorado based on the number of schools that will likely be identified for comprehensive and targeted support under the ESSA accountability requirements. Further, there is no basis in statute for the amounts required by the proposed rule. Adding such requirements minimizes state flexibility, innovation, and inhibits using local need to determine appropriate allocations. While section (4) of proposed rule 200.24(c) provides direction regarding states that encounter "insufficient school improvement funds,'" these additional requirements impose an unnecessary burden on SEAs and LEAs - including the requirement that SEAs prioritize funds based on an LEA's demonstration of need - that would not exist but for the creation of proposed rule 200.24. Further, this additional direction has no basis in statute. **Suggested Alternative** Remove all minimum grant amount requirements and allow states to determine award amounts based on LEA needs and implementation plans.	Language from the ESSA No language within the statute requires a minimum dollar amount for schools identified as comprehensive support and improvement. Language from the ESSA Section 1003(b)(2)(A): Authorizes SEAs to establish the method "the State will use to allocate funds to LEAs" **Impact on Colorado** Colorado is projected to have 34 schools that are in the lowest performing 5% of Title I Schools, plus another 100 or more high schools that have a graduation rate below 67%, that will be identified for comprehensive support. Although the criteria for identifying targeted schools are yet to be determined, several hundred Colorado schools will likely require targeted support. (NOTE: These projections are based on prior years' data and are subject to change by the time of the ESSA implementation.) Awarding this minimum amount for each type of school in Colorado will far exceed the State's estimated 7 percent Title I set-aside for comprehensive and targeted schools (approximately $10.5 million). In fact, applying the minimum amounts required in the proposed regulations to Colorado's estimate for comprehensive schools would require an estimated $67 million – almost half of the ***total*** $150 million Title I allocation for the State.	34608	1 1, 2	(c)(ii) (4)
200.30	**Comment on §200.30** **Proposed rule adds a requirement that does not have basis in and conflicts with statute.**	Language from the ESSA Section 1111(c)(5):	34609	1	(a)(2)

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	Section (a)(2)(ii) of proposed rule 200.30 adds to the statutory reporting minimums by requiring states to include information for each authorized public chartering agency in the state. Section 1111(c)(5) of the ESSA states that accountability for charter schools is to be overseen in accordance with State charter school law. Further, section 1111(h) does not include reporting requirements for charter schools. **Suggested Alternative** Remove section (a)(2)(ii) of proposed rule 200.30 and provide direction regarding charter schools in non-regulatory guidance.	(5) ACCOUNTABILITY FOR CHARTER SCHOOLS. —The accountability provisions under this Act shall be overseen for charter schools in accordance with State charter school law. Language from the ESSA Section 1111(h)(1)(B): (iii) ***widely accessible to the public***, which shall include making available on a single webpage of the State educational agency's website, the State report card, all local educational agency report cards for each local educational agency in the State required under paragraph (2), and the annual report to the Secretary under paragraph (5).			
	Comment **Proposed rule adds a requirement that does not have basis in statute and increases burden on states.** Section (b)(2) of proposed rule 200.30 requires states to include a "clearly labeled overview section" in the annual State report card and delineates the requirements for this section. While many of the requirements reflect minimum reporting requirements under 1111(h)(1)(C), the overview section is not required by statute. Further, the proposed rule creates ambiguity that did not exist under statutory requirements, which must then be clarified by section (b)(3). This proposed rule unnecessarily organizes the reporting requirements already prescribed by statute. **Alternative Suggestion** Remove section (b) of proposed rule 200.30.		34609	1, 2	(b)(2)
	Comment **Proposed rule alters statutory requirements and imposes an unreasonable timeline.** Section (d) of proposed rule 200.30 requires states to "disseminate widely to the public the state report card," whereas section 1111(h)(1)(B)(iii) of the ESSA requires the state to make the report card "widely accessible to the public." The change in terminology from make "accessible" to "disseminate" indicates an expectation beyond the statutory requirements. While the proposed rule indicates a minimum action - making the report card available on the SEA's website - which parallels the statutory requirements, the change in terminology is unnecessary and does not clarify statutory requirements.		34609	2	(d)
	Section (e) of proposed rule 200.30 requires states to disseminate report cards no later than December 31 for the preceding school year. This aggressive timeline is extremely difficult for states to meet and imposes unreasonable expectations. Furthermore, this timeline overlaps with		34609	2	(e)

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	the reporting required in EDFacts and Consolidated State Report Card, which require a tremendous amount of work for SEAs in November and December of each year. **Suggested Alternative** Remove section (d) of proposed rule 200.30 and provide direction regarding making report cards widely accessible to the public in non-regulatory guidance. Remove section (e) of proposed rule 200.30 or revise the submission deadline to one that is more reasonable for states to meet (***no earlier than March 31st of each year***).				
200.31	**Comment on §200.31** **Proposed rule imposes unreasonable requirements and timelines on LEAs.** Under section (b)(3) of proposed rule 200.31, LEAs must ensure that the overview section is distributed on a ***single piece*** of paper. Similar to the comment in proposed rule 200.30, the overview section is not required by statute. Further, requiring LEAs to condense this information onto a single piece of paper elevates form over substance and creates an unreasonable requirement that is better left to the LEAs to determine. Under section (d)(3) of proposed rule 200.31, LEAs are required to provide information "directly" to parents of students enrolled in each school. This requirement exceeds the statutory requirement under section 1111(h)(2)(B)(iii) of the ESSA, which requires LEAs to make the LEA report card accessible to the public through the LEA's website. This proposed rule increases the burden upon LEAs and specifies communication requirements that are better left to the LEAs to determine. Finally, similar to the SEA requirement under proposed rule 200.30, section (e) of proposed rule 200.31 requires LEAs to "disseminate report cards...for the preceding school year no later than December 31." This aggressive timeline is difficult for LEAs to meet. **Suggested Alternative** Remove sections (b)(3) and (d)(3) from proposed rule 200.31. Provide direction regarding making report cards widely accessible to the public in non-regulatory guidance. Remove section (e) of proposed rule 200.31 or revise the submission deadline to one that is more reasonable for LEAs to meet (***no earlier than March 31st of each year***).	Language from the ESSA Section 1111(h)(2)(B)(iii): ''(2) ANNUAL LOCAL EDUCATIONAL AGENCY REPORT CARDS. — PREPARATION AND DISSEMINATION. —A local educational agency that receives assistance under this part shall prepare and disseminate an annual local educational agency report card that includes information on such agency as a whole and each school served by the agency. IMPLEMENTATION. —Each local educational agency report card shall be— (i) concise; (ii) presented in an understandable and uniform format, and to the extent practicable, in a language that parents can understand; and (iii) accessible to the public, which shall include— (I) ***placing such report card on the website*** of the local educational agency; and (II) ***in any case in which a local educational agency does not operate a website, providing the information to the public in another manner determined by the local educational agency***. (***emphasis added***)	34610 34610 34610	2 3 3	(b)(3) (d)(3) (e)
200.32	**Comment on §200.32** **Proposed rule adds requirement that has no basis in statute.**	Language from the ESSA Section 1111(h)(1)(C)(i)(V):	34611	1, 2	(c)(2) & (3)

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	Under sections (c)(2)-(3) of proposed rule 200.32, state and LEA report cards must specifically identify the reasons that led to identification for comprehensive and targeted support. While section 1111(h)(1)(C)(i)(V) of the ESSA requires states and LEAs to identify the number and names of all public schools identified for comprehensive and targeted support in the annual report card, the additional proposed rule requirement exceeds the statutory requirements. **Suggested Alternative** Remove provision in proposed rule 200.32 that require specific reasons that led to identification.	(V) the number and names of all public schools in the State identified by the State for comprehensive support and improvement under subsection (c)(4)(D)(i) or implementing targeted support and improvement plans under subsection (d)(2);			
200.33	**Comment on §200.33** Reporting the number of non-participants in the achievement denominator leads to inaccurate and misrepresentative data. **Suggested Alternative** Reporting achievement and participation rates together is much more accurate, transparent and useful.	**Impact on Colorado** Using this calculation method, we would have, for example, a high school that would go from 44% at benchmark to 2.2%, which is misleading. But participation rate is necessary.	34611	2 3	
200.34	**Comment on §200.34** Deadline for reporting graduation rates is not feasible to meet. **Suggested Alternative** Move the deadline to March 31st or later of each year.		34612		
200.35	**Comments on §200.35** **Comment #1** **Proposed rule imposes an unreasonable timeline.** Colorado school districts are statutorily required to submit audited financial statements to the CDE and the Office of the State Auditor no later than December 31st. School districts may file for an extension through the State Auditor allowing them 60 additional days to submit audited financial statements, allowing them through March 1st. Districts are unable to finalize their financial data to CDE until the completion of their audited financial statements. Following the receipt of the district financial data and audited financials, CDE has a review process, which often results in updates to the data submitted by districts. This process ensures the accuracy and consistency of the financial data submitted to the USDE. It is not feasible to require LEAs to produce audited financial statements earlier than December 31st. In fact, approximately 34 of 203 (17 percent) of LEAs receive extensions each year.	**Impact on Colorado**: Colorado does not currently collect per pupil allocations separately by funding source. This additional requirement would increase SEA administrative burden and LEA reporting requirements. **For Comment #1** § 200.35(a)(1)(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.30(e), for each LEA in the State, and for each school served by each LEA § 200.35(b)(1)(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.31(e), for the LEA and each school served by the LEA § 200.30(e) Timing of report card dissemination.	34613	1 2	(a) (c)

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	Requiring reporting prior to the completion of the audit will result in inaccurate and unreliable data. Inconsistencies in reported data and audited financial statements will undermine public confidence and result in less financial transparency due to the resulting confusion from conflicting data. **Suggested Alternative** Change the required deadline to no later than June 30th for the preceding fiscal year. **Comment #2** **Proposed rule increases the burden on LEAs.** The proposed regulations require all LEAs to report current expenditures at the school-level. This will place a burden on LEAs. Specifically, small LEAs will be significantly burdened by this requirement. In 2014, Colorado's General Assembly amended the Public School Financial Transparency Act to require the reporting of actual expenditures at local education agency level and the school-site level. In 2015, this Act was again amended to exempt school-site level reporting for rural school districts that enroll fewer than one thousand students. This exemption was made in order to reduce the burden such reporting would have on small rural school districts. **Suggested Alternative** Provide for an exemption of school-level reporting for school districts with less than one thousand enrolled students. This change would greatly reduce the burden for small districts, but would still capture school level reporting for districts representing 96 percent of students within Colorado. **Comment #3** **Proposed rule increases the burden on LEAs.** The proposed regulations require expenditures per pupil be disaggregated by source of funds both at the LEA-level and at the school-level. This will place a burden on LEAs as the proposed regulations will result in the need for a significant amount of additional coding for expenditures. The Colorado Chart of Accounts currently requires a program code for all expenditures. Expenditures associated with most federal funds and grant funds also require a grant/project code for expenditures. However, federal child nutrition program expenditures and expenditures for state, local, and private funding sources are not required to be coded with grant/project codes. Under the proposed regulation, additional grant/project coding will be required for expenditures associated with federal child nutrition programs and private sources. This will	(1) Beginning with report cards based on information from the 2017-2018 school year, a State must annually disseminate report cards required under this section for the preceding school year no later than December 31. (2) If a State cannot meet the December 31, 2018, deadline for reporting some or all of the newly required information under section 1111(h)(1)(C) of the Act for the 2017-2018 school year, the State may request from the Secretary a one-time, one-year extension for reporting on those To receive an extension, a State must submit to the Secretary, by July 1, 2018- (i) Evidence satisfactory to the Secretary demonstrating that the State cannot meet the deadline in paragraph (e)(1) of this section; and (ii) A plan and timeline addressing the steps the State will take to disseminate, as expeditiously as possible, report cards for the 2017-2018 school year consistent with this section. § 200.31(e) Timing of report card dissemination. (1) Beginning with report cards based on information from the 2017-2018 school year, an LEA must annually disseminate report cards required under this section for the preceding school year no later than December 31. (2) If an LEA cannot meet the December 31, 2018, deadline for reporting some or all of the newly required information under section 1111(h)(1)(C) of the Act for the 2017-2018 school year, a State may request from the Secretary a one-time, one-year extension for reporting on those elements on behalf of the LEA consistent with the requirements under 200.30(e)(2). § 29-1-606, C.R.S.(1)(b) The audit required by this part 6 for school districts shall be completed and the audit report thereon submitted by the auditor to the school district within five months after the close of the fiscal year of the school district. § 29-1-606, C.R.S. (3) The local government shall forward a copy of the audit report to the state auditor within thirty days after receipt of said audit. The state auditor shall retain such copy in his office as a public record where it shall be available for public inspection at all reasonable times. In the case of a school district, a copy of the audit report shall also be submitted to the commissioner of education within thirty days after the audit report is received. § 29-1-606, C.R.S. (4) If within one month after the time period provided in subsection (1) of this section the local government is unable to file an audit report with the state auditor,			

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	require a significant amount of effort by LEAs in order to specifically tie expenditures to these funding sources. **Suggested Alternative** Remove the disaggregated reporting of expenditures by source of funds. Disaggregated reporting of revenues by fund source is meaningful and appropriate. **Comment #4** **Proposed rule is unclear.** The proposed regulations require that state and local funds must not include funds received from private sources, however, funds from private sources is not defined. The Colorado Chart of Accounts classifies the following as local sources: taxes, property taxes, specific ownership taxes, sales and use taxes, delinquent taxes and penalties and interest on taxes, abatements and credits, refunds, tuition, transportation fees, earnings on investments, interest on investments, dividends on investments, other earnings on investments, reimbursable food service revenue, student lunches/breakfasts, adult lunches/breakfasts, a la carte, adult, a la carte, pupil activities, gate/door admissions, fund raisers, private grants, gifts, other revenue from local sources, rentals/leases, contributions and donations from private sources, instructional materials fees, parking fees, advertising, insurance claims and other miscellaneous revenue. In order to know which of these sources to be excluded from state and local sources, we would need a definition of private sources. For example, would all non-tax revenues be considered private sources. **Suggested Alternative** Provide clarification for the definition of funds from private sources. **Comment #5** **Proposed rule imposes unreasonable requirements.** The proposed regulations require states to develop uniform, single statewide procedures to calculate school-level current expenditures per pupil, including personnel and nonpersonnel expenditures. It is not feasible to have a uniform, single procedure established by the state. Every LEA is unique, and Colorado is a local control state which allows LEAs to determine the appropriate level of budget management and control. The expenditures each LEA reports at each unique school site are decisions specific to the school district. For example, some LEAs are centralized, where budgets and expenditures are managed at the district level, while others are decentralized, where budgets and expenditures are managed at the school level.	the governing body of the local government shall submit to the state auditor a written request for extension of time to file. Such request for extension shall be submitted no later than one month after the time period provided in subsection (1) of this section. The state auditor may authorize an extension of such time for not more than sixty days. **For Comment #2** § 22-44-304, C.R.S. (1)(d) (I) Additionally, commencing July 1, 2015, each local education provider shall post in a format that can be downloaded and sorted, for free public access, the local education provider's actual expenditures, including but not limited to actual salary expenditures and actual benefit expenditures reported by job category specified in the standard chart of accounts, at the local education provider level and at the school-site level. (II) Notwithstanding any provision of subparagraph (I) of this paragraph (d) to the contrary, a school district that the department determines is rural, based on the geographic size of the school district and the distance of the school district from the nearest large, urbanized area, and that enrolls fewer than one thousand students in kindergarten through twelfth grade is not required to report expenditures at the school-site level except for those school-site level expenditures that the school district charges any portion of to a district charter school. **For Comment #3** § 200.35(a)(1)(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.30(e), for each LEA in the State, and for each school service by each LEA – (A) In the aggregate; and (B) Disaggregated by source of funds, including - (1) Federal funds; and (2) State and local funds combined (including Impact Aid funds), which must not include funds received from private sources. § 200.35(b)(1)(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.31(e), for the LEA and each school service by each LEA – (A) In total (Federal, State, and local funds); and (B) Disaggregated by source of funds, including -			

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	Additionally, it may be impractical for many LEAs to assign or allocate nonpersonnel costs to the school level with their current staffing and systems. Many LEAs do not have a cost accounting systems or procedures necessary for reporting at this level. In response to draft legislation in 2014, it was estimated that meeting proposed school site-level reporting requirements could increase staffing costs by up to $1.1 million to compile, track, and verify school-level data. **Suggested Alternative** Remove the requirement for a uniform, single statewide procedure, allowing LEAs to report those expenditures at the school-level which are appropriate to each LEA. **Comment #6** **Proposed rule is unclear.** The proposed regulations outline that preschool expenditures are included as current expenditures. However, the regulations also outline that student membership data should include the number of students whom the state and LEA provide free public education. These regulations appear inconsistent as the expenditure data would include expenditures associated with tuition preschool students, while the student count data would not include such students. Tuition preschool students represent approximately 16 percent of preschool students in Colorado. This scenario would also apply, albeit to a lesser extent, for other grades. Such a discord between the nominator and denominator could skew the per pupil expenditure figures. **Suggested Alternative** Provide clarification for the denominator of student membership definition to include all students enrolled in the state, LEA or school, not just those to whom the state and LEA provide free public education. **Comment #7** **Proposed rule adds an additional requirement that has no basis in statute.** Section (a)(1)(i)(B) requires reporting disaggregated source of funds by federal, states, and local funds and Section (c) adds the requirement to develop a "single statewide procedure to calculate school-level current expenditures per pupil…." **Suggested Alternative** Remove Sections (a)(1)(i)(B) and (c) of proposed rule 200.35.	(1) Federal funds; and (2) State and local funds combined (including Impact Aid funds), which must not include funds received from private sources. **For Comment #4** § 200.35(a)(1)(i)(B)(2) State and local funds combined (including Impact Aid funds), which must not include funds received from private sources. § 200.35(b)(1)(i)(B)(2) State and local funds combined (including Impact Aid funds), which must not include funds received from private sources. **For Comment #5** § 200.35(a)(1)(ii) The Web address or URL of, or direct link to, a description of the uniform procedure required under paragraph (c) of this section that complies with the requirements under § 200.21(b)(1) through (3). § 200.35(b)(1)(ii) The Web address or URL of, or direct link to, a description of the uniform procedure required under paragraph (c) of this section. § 200.35(c) Uniform procedures. A State must develop a single statewide procedure to calculate LEA current expenditures per pupil and a single statewide procedure to calculate school-level current expenditures per pupil, such that – (1) The numerator consists of current expenditures, which means actual personnel costs (including actual staff salaries) and actual nonpersonnel expenditures of Federal, State, and local funds, used for public education – (i) Including, but not limited to, expenditures for administration, instruction, instructional support, student support services, pupil transportation services, operation and maintenance of plant, fixed charges, and preschool, and net expenditures to cover deficits for food services and student body activities; but (ii) Not including expenditures for community services, capital outlay, and debt services; Colorado Constitution - Article IX, § 15 The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a			

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		board of education, to consist of three or more directors to be elected by the qualified electors of the district. Said directors shall have control of instruction in the public schools of their respective districts. § 22-30.7-101, C.R.S. (g) Local control of schools is a fundamental Colorado value; **For Comment #6** § 200.35(c)(1) The numerator consists of current expenditures, which means actual personnel costs (including actual staff salaries) and actual nonpersonnel expenditures of Federal, State, and local funds, used for public education – (i) Including, but not limited to, expenditures for administration, instruction, instructional support, student support services, pupil transportation services, operation and maintenance of plant, fixed charges, and preschool, and net expenditures to cover deficits for food services and student body activities; but (ii) Not including expenditures for community services, capital outlay, and debt services; and § 200.35(c)(2) The denominator consists of the aggregate number of students in elementary and secondary schools to whom the State and LEA provide free public education on October 1, consistent with the student membership data collected annually by States for submission to the National Center for Education Statistics.			
200.36	**Comment on §200.36** **The proposed rule increases burdens on SEAs and does not provide clarity where there is ambiguity in the statute.** The ESSA requires disaggregated rates be calculated for each subgroup. This results in increased burden on SEA staff. In order to obtain the required data, an on-going expenditure is required to identify the postsecondary institution to which the student matriculated. Provide guidance on how to factor in calculations students taking a gap in post-secondary enrollment.		34613	2 3	
200.37	**No Comment**				
299.13	**No Comment**				

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299.14	**No Comment**				
299.15	**No Comment**				
299.16	**Comment on §299.16** **Proposed rule increases the burden on LEAs and expands Secretary's authority in individual plans, which may conflict with statutory prohibitions.** Under section (a) of proposed rule 299.16, states are required to provide evidence "at such time and in such manner specified by the Secretary" regarding the state's adopted standards. However, under the individual plan requirements, states are only required to assure that the SEA has adopted academic achievement standards and demonstrate that the SEA has adopted English language proficiency standards. The use of the broad terms "provide evidence" – rather than the statutory language "demonstrate" – indicate that the Secretary may engage in the review of the state's standards. This conflicts with section 1111(b)(1)(G)(i) of the ESSA, which prohibits the Secretary from requiring a state to submit any standards for review. **Suggested Alternative** Align the authority granted to the Secretary under the consolidated application process to that granted under each individual plan, and remove all provisions that are prohibited by the statute. Prevent ambiguity by aligning language between the statute and the rules.	Language from the ESSA Section 1111(b)(1)(G)(i): (i) STANDARDS REVIEW OR APPROVAL. -- A State shall not be required to submit any standards developed under this subsection to the Secretary for review or approval.	34617	1	(a)
299.17	**No Comment**				
299.18	**Comment on §299.18** **Proposed rule expands Secretary's authority in individual plans, which may conflict with statutory prohibitions, and increases the burden on states.** Under section (c)(1) of proposed rule 299.18, and then delineated in section (c)(3), SEAs are required to "demonstrate" whether students enrolled in Title I schools are taught at disproportionate rates by ineffective, out-of-field or inexperienced teachers as compared to their peers attending non-Title I schools. However, under section 1111(g)(1)(B) of the ESSA, states are required to "describe" how students are not served at disproportionate rates. This change in language indicates a higher standard of review for the consolidated application than the individual plan, and the distinction between the two terms is not clearly laid out in the regulations. Additionally, section (b)(2) of the proposed rules add requirements that do not appear to have a basis in statute.	Language from proposed rule 299.18: Section (c) (1) Each SEA must ***demonstrate***, consistent with section 1111(g)(1)(B) of the Act, whether low-income and minority students enrolled in schools that receive funds under title I, part A of the Act are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers compared to non-low-income and non-minority students enrolled in schools not receiving funds under title I, part A of the Act in accordance with paragraph (c)(3) of this section. (***emphasis added***) Language from the ESSA Section 1111(g): (1) DESCRIPTIONS.—Each State plan shall ***describe***— (B) how low-income and minority children enrolled in schools assisted under this part are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, and the measures the State educational agency will use to evaluate and publicly report the	34619	2, 3 2	(c)(1) & (3) (b)

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	Suggested Alternative Change the word "demonstrate" to "describe" in order to reflect and remain consistent with the requirements in statutory language. Remove section (c)(3) of proposed rule 299.18.	progress of the State educational agency with respect to such description (except that nothing in this subparagraph shall be construed as requiring a State to develop or implement a teacher, principal, or other school leader evaluation system); (***emphasis added***)			
299.19	**Comment on §299.19** **Proposed rule includes a requirement that has no basis in statute and restricts state flexibility.** Under section (b) of proposed rule 299.19, SEAs must describe how information and data will be used to inform the review and approval of LEA applications. This requirement is not in statute and states should have flexibility in making this decision. Section (a) of the proposed regulation is accurate and consistent with section 8302(a)(1) of the ESSA in that the Department may "define the procedures under which an SEA may submit a consolidated State plan." However, section 8302(a)(1) must be done in accordance with section 8302(b), which requires the Department to "collaborate with State educational agencies" in establishing the criteria and procedures for the consolidated application. Colorado is unaware of whether or when collaboration with our agency, or other state agencies, took place. Thus, the USDE has either not satisfied the requirements under section 8302(b) of the ESSA or failed to effectively communicate that it did so. **Suggested Alternative** Remove proposed rule 299.19(b) and provide direction regarding use of information and data in the LEA review and approval process in guidance. Provide updated communication regarding the collaboration that took place with SEAs, if it did. If the USDE failed to collaborate with SEAs, all criteria and procedures that increase the burden or standard of review for the consolidated application that are included in the regulations should be revised to reflect the requirements under each individual program and guidance should be released regarding how the consolidated application should be completed so as to lessen the burden on SEAs.	Language from proposed rule 299.19(b): Performance management and technical assistance. In addition to the requirements in § 299.14(c), each SEA must describe how it will use the information and data described in paragraph (a)(3) of this section to inform review and approval of LEA applications and technical assistance in the implementation of LEA plans.	34620	3	(b)