inclusion in the accountability system is most appropriate for each recently arrived English learner. The proposed regulations would also clarify that a State must establish a uniform procedure for making this student-level determination, which will ensure fairness across LEAs and maximize the inclusion of recently arrived English learners, while recognizing the heterogeneity of such students, and promote the availability of comparable data for recently arrived English learners statewide.

Although the statute specifically states that the scores of students previously identified as an English learner may be included for up to four years for the calculation of the Academic Achievement indicator, the statute is silent about whether States may include the scores of a student who was previously identified as a child with a disability under section 602(3) of the IDEA. Accordingly, proposed § 200.16 would differ from the current title I regulations, which allow States to count the scores of students who were previously identified as a child with a disability for the purposes of making accountability determinations for up to two years. Unlike English learners, who all share a goal of attaining English language proficiency and exiting the English learner subgroup, the goal for all children with disabilities is not always or necessarily to exit special education services. The flexibility in the current title I regulations is intended to allow school assessment results for the student with disabilities subgroup to reflect the gains that students exiting the subgroup had made in academic achievement. As a result, however, the academic achievement results used for accountability for the students with disabilities subgroup in a particular school may not fully reflect the achievement of students receiving special education services. Because this provision was not included in the ESEA, as amended by ESSA, we seek specific comments on whether the provision to allow a student who was previously identified as a child with a disability under section 602(3) of the IDEA, but who no longer receives special education services, to be included in the children with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator should be retained or modified in proposed § 200.16, and if so, whether such students should be included in the subgroup for up to two years consistent with the current title I regulations, or for a shorter proposed period of time.

Section 200.17  Disaggregation of Data

Statute: Section 1111(c)(3) of the ESEA, as amended by the ESSA, requires each State to determine, in consultation with stakeholders, a minimum number of students (hereafter "n-size") that the State will use for accountability and reporting purposes. The n-size must be statistically sound, the same for all students and for each subgroup of students, and sufficient to not reveal any personally identifiable information.

Current Regulations: Section 200.7(a)(1) prohibits a State from using disaggregated data for reporting purposes or AYP determinations if the number of students in the subgroup is insufficient to yield statistically reliable information. Section 200.7(a)(2) requires a State, using statistical methods, to determine and justify its consolidated State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

Section 200.7(a)(2)(i) requires a State, in determining its minimum subgroup size, to consider statistical reliability in setting such number to ensure, to the maximum extent practicable, that all students are included, particularly at the school level, for purposes of making accountability decisions. Section 200.7(a)(2)(ii) requires each State to revise its Consolidated State Accountability Application Accountability Workbook to include: (1) An explanation of how the State’s minimum subgroup size meets the requirements of § 200.7(a)(2)(i); (2) an explanation of how other components of the State’s AYP definition, in addition to the State’s minimum subgroup size, interact to affect the statistical reliability of the data and to ensure maximum inclusion of all students and subgroups of students; and (3) information on the number and percentage of schools and subgroups of students excluded from school-level accountability determinations. Section 200.7(a)(2)(iii) requires each State to submit a revised Consolidated State Accountability Application Accountability Workbook that incorporates the information required in § 200.7(a)(2)(ii) for technical assistance and peer review.

The section also clarifies that students excluded from disaggregation and accountability at the school level must be included at the level (LEA or State) for which the number of students is reliable. It stipulates that a State must meet the requirements of 444 of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974) in determining whether disaggregated data would reveal personally identifiable information.

Proposed Regulations: Proposed § 200.17 would retain and reorganize the relevant requirements of current § 200.7, which would be removed and reserved, so that these requirements are incorporated directly into the sections of the proposed regulations pertaining to accountability, instead of regulations pertaining to assessments in current §§ 200.2 through 200.10. Further, proposed § 200.17 would update the requirements in current § 200.7 to reflect new statutory requirements that promote statistical reliability and inclusion of subgroups for accountability in the ESSA.

Proposed § 200.17 would also clarify data disaggregation requirements. Specifically, proposed § 200.17(a)(2)(iii) would clarify that, for the purposes of the statewide accountability system under section 1111(c), a State’s n-size may not exceed 30 students, unless the State is approved to use a higher number after providing a justification, including data on the number and percentage of schools that are not held accountable for the results of each required subgroup of students in the State’s system of annual meaningful differentiation, in its State plan. Proposed § 200.17(a)(2)(iv) would further clarify that the n-size sufficient to yield statistically reliable information for purposes of reporting under section 1111(h) may be lower than the n-size used for purposes of the statewide accountability system under section 1111(c).

Reasons: The ESEA, as amended by the ESSA, continues to focus on holding schools accountable for the outcomes of specific subgroups of students. The statute specifically requires that accountability determinations be based on the performance of all students and each subgroup of students, and requires a State to disaggregate data for purposes of measuring progress toward its long-term goals performance on each indicator under proposed §§ 200.13 and 200.14. The need to ensure statistical reliability and protect student privacy qualifies these disaggregation requirements; thus, the statute requires States to set an n-size and prohibits accountability determinations or reporting by subgroup if the size of the subgroup is too small to yield statistically reliable results, or would reveal personally identifiable information about individual students. Because these are statutory requirements for accountability systems under section 1111(c), we propose to reorganize the current...
regulations so that requirements related to a State’s n-size are included within the regulatory sections pertaining to accountability, instead of State assessment systems, by removing and reserving current § 200.7 and replacing it with proposed § 200.17. A State’s n-size should be no larger than necessary to ensure the protection of privacy for individuals and to allow for statistically reliable results of the aggregate performance of the students who make up a subgroup. The n-size must also be small enough to ensure the maximum inclusion of each student subgroup in accountability decisions and school identification, including measuring student progress against the State’s long-term goals and indicators and notifying schools with consistently underperforming subgroups of students for targeted support and improvement, consistent with the statutory requirements to disaggregate data for such purposes.

Setting an n-size that is statistically reliable is a challenge for States. Previous approaches have, at times, prioritized setting a conservative n-size (e.g., 100 students) in order to yield more reliable accountability decisions. However, the use of an n-size is intended to ensure that results are both reliable and valid. While, in general, the reliability of results increases as the sample size increases, the validity of the results can decrease as more student subgroups are excluded from the accountability system. In other words, in determining an n-size, a State must appropriately balance the goal of producing reliable results with the goal of holding schools accountable for the outcomes of each subgroup of students. For example, under the ESEA, as amended by the NCLB, 79 percent of students with disabilities were included in the accountability systems of States with an n-size of 30. However, only 32 percent of students with disabilities were included in the accountability systems of States with an n-size of 40. Similarly, in a 2016 examination of the effect of using different subgroup sizes in California’s CORE school districts, the study found that when using an n-size of 100, only 37 percent of African American students’ math scores are reported at the school-level. However, using an n-size of 20 increases the percentage of “visible” African American students to 88 percent. The impact for students with disabilities is even larger: when the n-size is 100, only 25 percent of students with disabilities are reported at the school-level; however, 92 percent of students with disabilities are reported when using an n-size of 20.

Other analyses have shown that an n-size of 60 can potentially exclude all students with disabilities from a State’s accountability system. Basic statistics (e.g., the Central Limit Theorem) support the use of 30 as an n-size. The Central Limit Theorem states that as long as one uses a reasonably large sample size (e.g., sample size greater than or equal to 30), the mean will be normally distributed, even if the distribution of scores in the sample is not. Finally, some researchers have suggested that an n-size of 25 is sufficient to yield reliable data on student performance. For these reasons, proposed § 200.17(a)(2) would allow states to establish a range of n-sizes, not to exceed 30, so that States may select an n-size that is both valid and reliable. The proposed regulations would also allow a State to set an n-size that exceeds 30 students if it demonstrates how the higher number promotes sound, reliable accountability decisions and the use of disaggregated data in making those decisions in its State plan, including data on the number and percentage of schools that would not be held accountable for the results of students in each subgroup under its proposed n-size.

Section 200.18 Annual Meaningful Differentiation of School Performance

Statute: Section 1111(c)(4)(C)(i) of the ESEA, as amended by the ESSA, requires that each State establish a system for meaningfully differentiating all public schools in the State each year. The system of annual meaningful differentiation must be based on all of the indicators in the State accountability system under section 1111(c)(4)(B) for all students and for each subgroup of students. Section 1111(c)(4)(C)(i) requires that the system of annual meaningful differentiation afford substantial weight to each of the following indicators:

- Academic achievement;
- Graduation rates for high schools;
- A measure of student growth, if determined appropriate by the State, or another valid and reliable academic indicator that allows for meaningful differentiation in school performance for elementary and secondary schools that are not high schools; and
- Progress in achieving English language proficiency.

These indicators, combined, must also be afforded much greater weight than the indicator or indicators of school quality or student success.

Current Regulations: Various sections of the current title I regulations describe how a school’s performance against its AYP target may be determined under the various reporting categories included in the ESSA. These indicate that the regulations typically are made only in the context of the standards required by the ESSA.

Proposed Regulations: Proposed § 200.18 would replace the current regulations with regulations implementing the ESEA statutory requirements, as amended by the ESSA, for States to establish systems of annual meaningful differentiation of all public schools.

Performance Levels and Summative Ratings

The proposed regulations would require each State’s system of annual meaningful differentiation to—

- Include the performance of all students and each subgroup of students in a school on all of the indicators, consistent with proposed regulations for inclusion of subgroups in § 200.16, for disaggregation of data in § 200.17, and for inclusion of students that attend the same school for only part of the year in § 200.20(c);
- Include at least three distinct levels of performance for schools on each indicator that are clear and understandable to the public, and set those performance levels in a way that is consistent with the school’s attainment of the State’s long-term goals and measurements of interim progress in proposed § 200.13; and
- Provide information on each school’s level of performance on each indicator in the accountability system separately as part of the description of the State’s accountability system under...
its uniform procedure for including recently arrived English learners under paragraph (b)(4) of this section, if applicable.

[Authority: 20 U.S.C. 6311(b)-(c), (h); 20 U.S.C. 1221e–3]

9. Section 200.17 is revised to read as follows:

**§ 200.17 Disaggregation of data.**

(a) Statistically sound and reliable information. (1) Based on sound statistical methodology, each State must determine the minimum number of students sufficient to—

(i) Yield statistically reliable information for each purpose for which disaggregated data are used, including purposes of reporting information under section 1111(h) of the Act or for purposes of the statewide accountability system under section 1111(c) of the Act; and

(ii) Ensure that, to the maximum extent practicable, each student subgroup in § 200.16(a)(2) is included at the school level for annual meaningful differentiation and identification of schools under §§ 200.18 and 200.19.

(2) 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); and

(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; and

(iv) May be a lower number for purposes of reporting under section 1111(h) under the Act than for purposes of the statewide accountability system under section 1111(c) of the Act.

(3) A State must include in its State plan under section 1111 of the Act—

(i) A description of how the State’s minimum number of students meets the requirements of paragraphs (a)(1) of this section;

(ii) An explanation of how other components of the statewide accountability system, such as the State’s uniform procedure for averaging data under § 200.20(a), interact with the State’s minimum number of students to affect the statistical reliability and soundness of accountability data and to ensure the maximum inclusion of all students and each student subgroup under § 200.16(a)(2); and

(iii) A description of the strategies the State uses to protect the privacy of individual students for each purpose for which disaggregated data is required, including reporting under section 1111(h) of the Act and the statewide accountability system under section 1111(c) of the Act, as required in paragraph (b) of this section;

(iv) Information regarding the number and percentage of all students and students in each subgroup described in § 200.16(a)(2) for whose results schools would not be held accountable in the State accountability system for annual meaningful differentiation under § 200.18; and

(v) If applicable, a justification, including data on the number and percentage of schools that would not be held accountable for the results of students in each subgroup under § 200.16(a)(2) in the accountability system, that explains how a minimum number of students exceeding 30 promotes sound, reliable accountability determinations.

(b) Personally identifiable information. (1) A State may not use disaggregated data for one or more subgroups under § 200.16(a) to report required information under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student, teacher, principal, or other school leader.

(2) To determine whether the collection and dissemination of disaggregated information would reveal personally identifiable information about an individual student, teacher, principal, or other school leader, a State must apply the requirements under section 444 of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (2) of this section may be construed to abrogate the responsibility of a State to implement the requirements of section 1111(c) of the Act to annually meaningfully differentiate among all public schools in the State on the basis of the performance of all students and each subgroup of students under sections 1111(c)(2) of the Act on all indicators under section 1111(c)(4)(B) of the Act.

(4) Each State and LEA must implement appropriate strategies to protect the privacy of individual students in reporting information under section 1111(h) of the Act and in establishing annual meaningful differentiation of schools in its statewide accountability system under section 1111(c) of the Act on the basis of disaggregated subgroup information.

(c) Inclusion of students in assessments. If a subgroup under § 200.16(a) is not of sufficient size to produce statistically sound and reliable results, a State must include students in that subgroup in its State assessments under section 1111(b)(2)(B)(i) of the Act.

(d) Disaggregation at the LEA and State. If the number of students in a subgroup is not statistically sound and reliable at the school level, a State must include those students in disaggregated information at each level for which the number of students is statistically sound and reliable (e.g., the LEA or State level).

[Authority: 20 U.S.C. 6311(c), (h); 20 U.S.C. 1221e–3]

10. Section 200.18 is revised to read as follows:

**§ 200.18 Annual meaningful differentiation of school performance.**

(a) In its State plan under section 1111 of the Act each State must describe how its statewide accountability system under § 200.12 establishes a system for annual meaningful differentiation for all public schools.

(b) A State must define annual meaningful differentiation in a manner that—

(1) Includes the performance of all students and each subgroup of students in a school, consistent with §§ 200.16, 200.17, and 200.20(c), on each of the indicators described in § 200.14;

(2) Includes, for each indicator, at least three distinct levels of school performance that are consistent with attainment of the long-term goals and measurements of interim progress under § 200.13 and that are clear and understandable to the public;

(3) Provides information on a school’s level of performance on each indicator described in § 200.14, separately, as part of the description of the State’s system for annual meaningful differentiation on LEA report cards under § 200.32; and

(4) Results in a single rating from among at least three distinct rating categories for each school, based on a school’s level of performance on each indicator, to describe a school’s summative performance as part of the description of the State’s system for annual meaningful differentiation on LEA report cards under §§ 200.31 and 200.32;

(5) Meets the requirements of § 200.15 to annually measure the achievement of at least 95 percent of all students and 95 percent of all students in each subgroup of students on the assessments described in section 1111(b)(2)(B)(v)(I) of the Act; and

(6) Informs the State’s methodology described in § 200.19 for identifying schools for comprehensive support and