On April 23, 2008, the U.S. Department of Education (ED) released proposed Title I regulations. According to ED, the Notice of Proposed Rulemaking (NPRM) will clarify and strengthen current Title I regulations in the areas of assessment, accountability, supplemental educational services (SES), and public school choice. The public comment period is 60 days and the deadline for submitting comments is June 23. The Illinois State Board of Education (ISBE) appreciates the inclusion in the NPRM of the summary of the relevant section of the statute, current regulations, proposed regulations, and reasons for each change. There are changes proposed to 16 regulations that vary in detail and potential impact on Illinois. ISBE understands the intent of the Department to issue additional regulations as quickly as possible, but we are concerned that the timing may result in insufficient consideration of the impact of the proposed regulations on states, districts, and schools.

ISBE supports continued accountability, transparency and flexibility for schools and districts in meeting the academic needs of students in the states. ISBE’s comments are intended to provide ED with information for their consideration in developing the final regulations.

ISBE’s Comments on Proposed Title I Regulations

1. §200.2 - State Responsibility for Assessments (Multiple measures)
   The proposed regulation would clarify that states should measure student knowledge of content standards, including higher-order critical thinking skills, by using multiple item types within an assessment. States can also employ multiple assessments within a single subject area.

   ISBE supports the inclusion of the current practice in the proposed regulations since it does not include any new requirements or changes to the current system.

2. §200.7 - Disaggregating of Data (N-sizes)
   The proposed regulations would require states to produce new data and explanations regarding current practice. It would require all states to submit (1) evidence that their N-size includes all student subgroups at the school level to the maximum extent practicable while maintaining the statistical reliability of accountability determinations and student privacy; (2) an explanation of how other components of the State’s AYP definition may impact the inclusion of all students and student subgroups; and (3) information on the number and percentage of students and student subgroups excluded from school-level accountability determinations.

   It can be inferred that the requirement to provide justifications to ED of states’ already approved and implemented accountability plans will result in numerous rejections of current practice. ISBE appreciates that ED resisted codifying a universal and/or maximum “n” size, however, the proposed regulations would unduly burden states on the eve of reauthorization. Illinois went through a very rigorous analysis when considering minimum subgroup size and use of confidence intervals to ensure statistical reliability. All school/district level assessment results are subject to variation due to measurement error (at least 3% in Illinois), as well as errors due to sampling fluctuations in the year-to-year “supply” of students. Illinois applies a 95% confidence interval approach; thus, if the subgroup size is decreased, the confidence interval increases. For example, the 95% confidence interval will be 26% for the subgroup of 10 and 12% for the subgroup of 45. The larger the confidence interval, the less reliable the AYP calculation. According to analyses already completed and approved by the U.S. Department of Education, in order to apply the 95% confidence interval correctly a subgroup size of at least 45 should be used to reduce the possibility of statistical bias and errors. Illinois does not support the Department’s inclusion of this proposed regulation which amounts to the State having to start over with analysis and justification of the current effective
process. At the very least, the requirement to complete this unduly burdensome exercise within 6 months of the final regulations should be changed to apply for the 2009-10 school year.

3. §200.11 - National Assessment of Educational Progress (NAEP)

The proposed regulations would require all states to report NAEP results on state and local NCLB report cards.

ISBE opposes putting NAEP results on the report card due to the confusion interpreting the results of both the state assessments and NAEP. The purpose of NAEP and ISAT, the state assessments used for grade 4 and 8, are different. NAEP is used to compare state performance among the states. ISAT is used to measure performance against the Illinois Learning Standards. The NAEP “Proficiency” standard does not claim to measure “grade level” performance. It describes solid academic performance over challenging subject matter. Thus, the “proficiency” targets are higher for the NAEP than on the State assessment. The general public will not understand why the results are so different. Without understanding the differences between the two assessments, both the public and the media assume that the variations in the results mean the Illinois state assessment is not challenging enough or that the students are not really achieving. Neither assumption is accurate; however they will be exasperated by including the NAEP results on the state report card. In addition, including NAEP information on performance in reading and mathematics to report cards would seem to imply that students at all schools participated in NAEP. Only a sample of students from selected schools and districts in Illinois participate in the NAEP testing program. Inclusion of NAEP on the report cards may lead to the belief that state-level NAEP results include test scores from students at a particular school. The amount of time and effort that ISBE will have to expend in order to ensure accurate and appropriate use of the NAEP results far outweighs any potential benefit.

4. §200.19 - Other Indicators (Graduation rate calculation and accountability)

The proposed regulations would make three substantial changes to current practice of calculating and utilizing graduation data. First, ED would require states to use the National Governors Association's graduation compact rate calculation by 2012-13 and provides a limited exception to the four-year rule. Second, the proposed regulations would require states, by 2008-09, to set a graduation goal and measure whether all high schools make "continuous and substantial" improvement toward the goal for AYP. Third, ED would require states to disaggregate graduation rates and use them for district AYP by 2008-09 and for school AYP by 2012-13.

Illinois supports a uniform definition of the graduation rate that allows for the use of different cohorts for special education and recent immigrants with limited English proficiency. Illinois is concerned with the way in which transfers are being labeled as dropouts and with the methodology proposed by ED because of the potential unintended consequences on schools and districts. Illinois acknowledges that the proposed regulation includes the option for states to propose to the Secretary an alternate definition of “standard number of years” that would apply to limited categories of students who, under certain conditions, may take longer to graduate. However, Illinois is concerned that such proposals may not be approved despite the educational rationale. If the use of an alternative definition to measure graduation rates of certain student populations is approved, it will prove confusing for the public and detract from uniformity.

The graduation rate definition proposed by ED would count students who transfer out as drop-outs unless it can be confirmed that the student is deceased or enrolled in another program that awards a high school diploma (not including a GED). Tracking and documenting transfers, particularly interstate transfers, may present significant data challenges for some schools and districts.
Illinois has set a graduation goal, measures progress toward meeting that goal for AYP and publicly reports disaggregated graduation data. ISBE does not believe it is appropriate at this time to disaggregate a four-year cohort graduation rate, as proposed by ED, and use that for AYP. ISBE support the efforts by NGA to further delineate concerns and issues related to the U.S. Department of Educations’ proposed regulations related to graduation rate.”

5. **§200.20 - Growth models**
The proposed regulations would codify ED's existing pilot program and permits all states that meet the criteria to participate.

ISBE supports the proposed regulations and expects it will add consistency to how the pilot programs are approved and administered. However, ISBE hopes these regulations will not curtail the Department’s ability to approve flexibility under §9401 so that states can continue to explore alternative accountability methods that comply with the statutory criteria.

6. **§200.22 - National Technical Advisory Council**
The proposed regulations would establish a new body of experts, the National Technical Advisory Council, to advise the Secretary on technical issues, but would not review state plans. This process would supplement the peer-review process now used for assessments.

ISBE is neutral on the creation of additional advisory panels. In general, ISBE supports additional technical advice for the U.S. Department of Education and thus states; however, the authority of the council is unclear, as is the binding nature of any decision they may make on future policies.

7. **§200.32 - Identification of schools and LEAs for improvement**
Under current policy, the Department permits the identification of schools and LEAs for improvement if the school or LEA did not make AYP because it did not meet the AMO (i.e., proficiency target) in the same subject or academic indicator for two consecutive years. The proposed regulation would codify that identification of schools (§200.32) or LEA (§200.50) can not be based on the same subgroup missing the same subject/other indicator, as has been requested by numerous states.

ISBE is neutral on this proposed regulation since the state would like ED to keep this flexibility option available, especially as the AYP targets continue to be more difficult to reach.

8. **§200.37 – Notice of identification for improvement, corrective action, or restructuring**
Proposed regulations §200.37(b)(4)(iv) would change the current requirement that a district notify all parents in schools identified for improvement of the option to transfer their child to another school before the first day of the next school year to requiring notification no later than 14 calendar days before the start of school. Proposed regulation §200.37(b)(5)(ii)(C) would require the inclusion of a description of the benefits of receiving SES services to the existing SES notification letters.

Illinois supports proposed regulation §200.37(b)(5)(ii)(C) that would require the inclusion of a description of the benefits of receiving SES services to the existing SES notification letters. However, Illinois must oppose proposed regulation §200.37(b)(4)(iv) because inclusion of a mandated deadline for distribution of notification letters does not take into account the various assessment, reporting, and other obligations within states and districts.

Illinois continues to produce Adequate Yearly Progress (AYP) data as early as possible. Due to the spring testing cycle, preliminary assessment results and AYP calculations are made in the early summer. Time is also provided for districts and schools to verify and/or correct their data, which may
result in changes to AYP status. To ensure information complies with existing regulations, is provided accurately to parents, is presented in clear and concise language, and is distinguishable from other information sent to the home, ISBE reviews and approves each of the states 873 districts’ parent notification letters. Illinois strives to provide as much information to parents as early as possible so that they can make informed decisions. By including this deadline in the final regulations the U.S. Department of Education is setting Illinois up to be in non-compliance should there be any issues with assessment data in a particular district.

9. §200.39 - Responsibilities resulting from identification for school improvement. (SES/Choice Reporting)
Require districts to notify parents about schools identified for improvement.
The proposed regulation would require districts to report additional information “prominently” on their web sites, including:
   1) The number of students eligible for and participating in choice and SES.
   2) A list of SES state-approved providers and their service locations.
   3) Schools available for choice transfer.

ISBE supports the goal of this proposed regulatory change; however, some clarification is needed. First, the timing of the public reporting requirement needs clarification. As currently written, the above information is to be posted to the district’s website “as soon as this information becomes available.” That will prove problematic when reporting SES participation information, especially in high student mobility areas and in districts where multiple or rolling SES enrollments are available. Posting the data proposed in the regulations after the close of a school year’s cycle of SES is the only way to capture accurately the numbers of eligible and participating students since those numbers are variable during a school year. Conversely, posting the list of approved providers and their service locations after SES is completed would accomplish very little. One alternative would be to report information about SES providers at the beginning of the SES cycle and to post data about eligibility and participation numbers after the close of the cycle for each school year.

10. §200.43 - School restructuring
The proposed regulations would clarify that schools in restructuring status produce a restructuring plan that addresses the reasons they were identified and is “significantly more rigorous” than the corrective action plan. The proposed regulation also clarifies that while a restructuring plan that removes a majority of school staff may also remove a principal, simply removing a principal is not sufficient to count as restructuring.

Illinois opposes placing limitations on states’, districts’, and schools’ ability to tailor restructuring interventions that best meet the needs of the school so that systemic improvement can occur. ISBE strives to address more than just AYP results when developing and assisting schools that are in need of improvement. Furthermore, ISBE believes activities initiated under the current corrective action phase of school improvement can, and should be, continued in the restructuring plan, especially if the state, district, or school chooses to implement more rigorous interventions earlier in the school improvement timeline.

11. §200.44 - Public school choice (timeline)
The proposed regulation would make clear that an LEA must notify parents about the option to transfer their child to another school no later than 14 calendar days before the start of the school year.

ISBE reiterates the same opposition to this proposal as articulated above under §200.37.
12. §200.47 - SEA responsibilities for supplemental educational services (State approval/monitoring of SES providers)

The proposed changes for this section fall into three categories: 1) monitoring LEA implementation, 2) approving SES providers, and 3) monitoring SES providers.

ISBE agrees with ED’s rationale for proposed §200.47(a)(4)(iii) (i.e., that rigorous and clear criteria should be used when monitoring LEAs’ implementation of SES). However, ISBE does not agree that publicly reporting such standards and techniques is the appropriate method to achieve ED’s desired outcome. States are continuing to gain a better understanding of SES implementation and thus of monitoring expectations, so inclusion of this regulation is premature.

The second category, the state approval process for SES providers, would require ISBE to ensure that provider applicants have curricular content that is aligned with ISBE’s academic content and student academic achievement standards and is research-based. The research-based requirement is already in the ISBE provider application. ISBE currently requires an assurance from applicants that their materials are aligned with the Illinois Learning Standards. We consult with districts about applicant curricular content to help ensure a connection to local materials and we require considerable information about curricular content in a series of questions in the application. The proposed language would also require ISBE to consider, when approving a provider application, whether the provider has been removed from another state’s approved list, parent recommendations from any parent surveys, and evaluation results establishing whether a provider can demonstrate that the proposed instructional program has, in fact, improved student achievement.

All of these components are already a part of the ISBE processes for approving and retaining providers; thus ISBE supports §200.47(b)(2)(ii) and §200.47(b)(3).

The third proposal, state monitoring of SES providers (§200.47(c)), would require ISBE to examine whether 1) a provider’s instructional program is consistent with the instruction and content used by the districts and ISBE, 2) that this instruction is consistent with the student SES learning plans, and 3) that the instruction has increased student academic proficiency. While the latter item is already a part of ISBE’s process for retaining providers on its approved list, the first two of these three items are problematic.

ISBE appreciates the intent of the proposed language to reinforce an SEA’s authority to monitor providers and make decisions about whether providers should remain on the approved list. However, as written, the interpretation may be that the SEA must examine each provider’s instructional program to ensure it is “consistent” with each district’s content and instructional practices and addresses the individual student needs as described on the SES plans. In Illinois, this would require personnel to compare provider plans with over 800 unique district content and instruction programs and to examine over 40,000 individual student plans. It is impractical to put such a burden on SEAs. Should ED proceed with the proposed regulations, a definition of what “consistent with the instruction provided and the content used by the LEA and the SEA” should be included to avoid requiring an alignment that might overwhelm the compliance abilities of providers and SEAs.

The reason behind articulating the “minimum evidence that a SEA must consider in approving providers” is to ensure high quality SES services. ISBE has rules and guidance already in place that supports this goal. The language proposed in the regulations may duplicate or impede existing activities and process. Therefore, ISBE opposes the inclusion of §200.47(c).

13. §200.48 - Reallocating unused SES/choice money from the 20 percent Title I set-aside
The proposed regulation would allow districts to count costs for providing outreach and assistance to parents on choice and SES toward meeting the 20 percent Title I obligation. This is capped at 0.2 percent of the district's Title I, Part A, subpart 2 allocation. In addition, the proposed regulations would require districts to demonstrate, before reallocating unused choice and SES funds from Title I, that they had: partnered with community organizations or other groups to reach out to parents about the programs; provided timely, accurate notice to parents about SES and choice availability; ensure sign-up forms were available to students and parents via paper, the Internet and other media; allow rolling sign-ups throughout the year; and provide fair and open access to SES providers to use school facilities.

ISBE is reluctant to support any additional burdens on districts and states as outlined in the proposed regulations. The process and requirements for amending district budgets to utilize unspent portions of the SES/Choice set-aside should remain with the States. Requiring districts to prove they have met the criteria proposed in §200.48(d)(1) in order to utilize unspent set-aside funds is an ineffective use of time or money for some districts in Illinois that would never reach their 20% set-aside due to their size, location and student demographics. Furthermore, requiring SEAs to monitor district compliance with the regulations’ proposed three-test criteria as part of the budgeting process is unduly burdensome. ISBE opposes the inclusion of this regulation.

14. §200.56 - Highly qualified teachers

Proposed §200.56(d) would add a cross-reference to the definition of highly qualified special education teachers in the IDEA regulations. This is only a technical change and would not affect the requirements for highly qualified teachers.

ISBE supports the inclusion of this technical reference to IDEA and the flexibility provided therein for special education teachers.