



September 9, 2016

Jessica McKinney  
U.S. Department of Education  
400 Maryland Avenue, SW  
Room 3W107  
Washington, DC 20202-2800

Dear Ms. McKinney:

I am writing to provide the comments of the Foundation for Excellence in Education (ExcelinEd) on the U.S. Department of Education's proposed regulations for the Innovative Assessment and Accountability Demonstration Authority ("the pilot"), authorized by section 1204 of the Elementary and Secondary Education Act (ESEA) as reauthorized by the Every Student Succeeds Act (ESSA).

ExcelinEd supports the Department's proposed regulations for the Innovative Assessment and Accountability Authority, as published in the July 11 Federal Register. We are committed to helping state education systems support innovative local leaders transition from traditional, one-size-fits-all, time-based systems toward more personalized, competency-based models that adapt to the needs of individual students. Toward that end, we are working with a number of states on the development and implementation of pilot competency-based programs. We believe that faithful implementation of the statutory requirements and corresponding regulations of the pilot will help states advance these efforts and simultaneously ensure equity and accountability for all schools and students.

In particular, ExcelinEd supports the following provisions, which clarify three key elements of the statute: students in districts not participating in the demonstration authority must continue to take the statewide assessment; how states will demonstrate that their innovative assessments meet the statute's technical requirements; and the timeline for when participating states have to administer their innovative assessments on a statewide basis.

#### **Students in Districts Not Participating in the Demonstration Authority**

- **Continued administration of statewide assessments.** §200.77(b)(1) would clarify that a state carrying out a demonstration continue to administer its statewide assessments in any schools not participating in the demonstration and in any grades and subjects in which the state does not choose to administer an innovative assessment. ExcelinEd endorses these proposed rules, which clarify language that is somewhat unclear in the statute. They would ensure that states' regular accountability procedures continue to operate during the demonstration period and thus the interests of non-participating students are not neglected during that time.

## Demonstrating that Innovative Assessments Meet the Statute's Technical Requirements

- **Grade-level determinations.** ExcelinEd supports §200.76(b)(2), which would allow a state's innovative assessment system to include cumulative year-end assessments, competency-based assessments, instructionally embedded assessments, interim assessments, performance-based assessments, or assessments that use other innovative designs and meet the statutory requirements. However, under any design, an assessment would be required to produce an annual summative determination of grade-level achievement. We believe that this language, which clarifies the language of the statute, would ensure that all students are held to the same rigorous standard.
  
- **Selection criteria.** By statute, the Department will use a peer-review process to select states to carry out Innovative Assessment and Accountability Demonstrations. Proposed §200.78 provides that peer reviewers would judge applications on the basis of, among other areas:
  - the state's rationale for developing or selecting a particular innovative assessment system (§200.78(a)(1));
  - the state's plan for developing standardized and calibrated scoring tools, rubrics, and other strategies for ensuring inter-rater reliability and comparability of results (§200.78(a)(2)(i));
  - the state's plan for ensuring that the LEAs and schools participating in the demonstration will be demographically diverse (§200.78(a)(3)(iii));
  - the relevant experience of the SEA and its LEAs, their capacity to carry out the demonstration, the proposed timeline and budget for the demonstration, and the extent of support from stakeholders, including participating LEAs (§200.78(b) and (c));
  - the quality of the support that the SEA will provide to participating educators and students (§200.78(d)); and
  - the quality of the SEA's plan for annual evaluation and continuous improvement of its implementation of the demonstration authority (§200.78(d)).

ExcelinEd applauds these proposed criteria, particularly the requirement that states provide a projected timeline and budget, which will help ensure that participating states have the financial capacity to design their innovative assessment system, evaluate comparability and other technical requirements and expand it statewide within the demonstration period. It will also provide helpful information for other prospective states.

We also agree that the Department should announce the selection criteria well ahead of time (that is, through the final version of the regulations proposed in the July notice), so that states can use them in determining if they should apply for the demonstration and then in planning their applications.

- **Demonstration of comparability.** Under the statute, an SEA's application must demonstrate that the results generated by the state's innovative assessment system will be comparable, for all students and each subgroup, to the results obtained from the state's statewide assessment

system. §200.77(b)(4) of the proposed regulations would give states four options (including a state-determined option) for annually determining comparability. We agree that ensuring comparability will be a key element of successful implementation of the demonstrations, and we believe that the four options set out in the proposed regulations are reasonable and would be effective.

We note further that, under §§200.77(b)(4) and 200.79(b)(1), a state would have to demonstrate (and peer reviewers would determine) the comparability of *each* of a state's innovative assessments, as well as the comparability of the state's innovative assessment system *as a whole*. While we recognize that an assessment-by-assessment determination of comparability will add burden, we also acknowledge that the Department's peer reviews of statewide (regular and alternative) assessments are conducted on an assessment-by-assessment basis and agree that the peer review criteria and procedures for innovative assessments should be no easier than those for statewide assessments. We, therefore, support the proposed policy but strongly encourage the Department to implement procedures that might reduce the burden, such as by allowing the use of sampling.

### **Timeline for the Demonstration Authority**

- **Demonstration authority period.** We support §200.76(b)(1), which would require that any state carrying out a demonstration use its innovative assessment system in all participating schools in each year of the demonstration authority period (the period of time in which the state is approved to implement the innovative demonstration authority). This very useful clarification will ensure that states obtain the necessary technical expertise, resources, and stakeholder buy-in *before* launching a demonstration, rather than having to undertake planning and developmental activities while the demonstration is already underway. If states are not prepared to implement their new systems from the onset, it will be very difficult for them to complete full implementation (and be ready to scale up to statewide use) by the end of the demonstration period. Further, as the Department points out in the preamble of the Notice of Proposed Rulemaking, states that need time to plan or develop innovative assessment systems will be able to do so before they enter into the demonstrations and can seek support from the Department during that time.
- **Initial implementation in a subset of schools.** The statute provides that an SEA may implement its innovative assessment system within a subset of LEAs within the state but is unclear on whether all schools within a participating LEA must participate. §§200.77(b)(1)(i) and 200.78(e) of the proposed regulations clarify that a state may implement the system initially in a subset of LEAs, or schools within one or more LEAs. We applaud this clarification, which will provide states with useful flexibility in piloting their systems and scaling them up for statewide use.
- **Extension of a state's demonstration authority.** Under the statute, the Department may extend an authorization for a state to carry out a demonstration (beyond the initial period of up to five years) if the state is continuing to meet the statutory requirements and has a plan and the capacity to transition to full statewide use of the innovative assessment system by the end of a two-year extension period. The proposed regulations (§200.80(a)(1)(iii)) provide that a request for an extension must include a demonstration that the SEA, as well as *all LEAs that are not yet fully implementing the innovative assessment system*, have sufficient capacity to support use of the system statewide by the end the extension period. We support the inclusion of this

additional language, which will help ensure that states receiving an extension are truly on track for achieving timely statewide implementation.

- **Waiver of withdrawal of authority.** Under the statute, the Department must withdraw a state's authority to implement a demonstration if, at any time during the initial demonstration period or an extension period, the state cannot meet certain requirements. However, the law also permits an SEA to request and receive a waiver to delay the Departments' withdrawal of authority if, at the end of a two-year extension, the state is not yet ready to transition to full statewide implementation but has met the other requirements for a demonstration. §200.80(c)(2) of the proposed regulations provides that a delay of the withdrawal of authority would be for a one-year period, only. We support that policy because it would ensure that states cannot operate two separate assessment systems for an extended period of time.

Thank you for the opportunity to provide ExcelinEd's comments on this important new authority. If we can provide any other information or assistance, please do not hesitate to contact me.

Sincerely,



Patricia Levesque  
Chief Executive Officer  
Foundation for Excellence in Education