

SUMMARY OF THE PRINCIPAL FLEXIBILITY PROVISIONS IN THE ELEMENTARY AND SECONDARY EDUCATION ACT (ESEA)

I. STATE FLEXIBILITY AUTHORITY (“STATE-FLEX”)

(ESEA Sections 6141 through 6144)

What is the State Flexibility Authority program?

The State Flexibility Authority program (State-Flex) is a new program that authorizes the Secretary to grant flexibility authority to up to seven eligible State educational agencies (SEAs). With this authority, an SEA may (1) consolidate and use certain Federal funds reserved for State administration and State-level activities for any educational purpose authorized under the ESEA; (2) specify how local educational agencies (LEAs) in the State use Innovative Program funds under Part A of Title V; and (3) enter into performance agreements with four to ten LEAs in the State, permitting those LEAs to consolidate certain Federal funds and to use those funds for any ESEA purpose consistent with the SEA’s State-Flex plan.

“State-Flex” is different than “Ed-Flex,” which is a separate program that authorizes the Secretary to delegate waiver authority to eligible SEAs.

How will the Secretary determine which States will be awarded State-Flex authority?

The Secretary will grant State-Flex authority to eligible SEAs on a competitive basis using a peer review process. The Department will announce the proposed selection process and criteria in the near future.

What conditions must an SEA meet in order to be eligible for State-Flex?

To be considered for State-Flex, an SEA must submit an application that, among other things –

- Includes a five-year plan describing how the SEA would consolidate and use funds from programs included in the scope of the grant of authority in order to make adequate yearly progress and advance the educational priorities of the State and the LEAs with which the SEA enters into performance agreements;

- Demonstrates that the authority offers substantial promise of assisting the SEA in making adequate yearly progress, and of aligning State and local reforms and assisting LEAs with which the SEA enters into performance agreements in making adequate yearly progress;
- Includes the proposed performance agreements that the SEA would enter into with between four and ten LEAs (at least half of which are “high-poverty LEAs”). Each proposed LEA performance agreement would contain plans for the LEAs to consolidate and use Federal funds for activities that are aligned with the SEA’s plan in order to assist the LEAs in making adequate yearly progress, improving student achievement, and narrowing achievement gaps;
- Assures that the SEA, and the LEAs with which it enters into performance agreements, will meet the requirements of all applicable civil rights laws.
- Assures that the SEA, and the LEAs with which it enters into performance agreements, will provide for the equitable participation of students and staff in private schools.
- Demonstrates that the SEA has consulted with and involved parents, teachers, LEA representatives, and other educators in the development of the terms of the grant of authority.

What funds may an SEA consolidate under State-Flex?

An SEA that receives State-Flex authority may consolidate funds for State-level activities and State administration under the following provisions, and use those funds for any authorized ESEA purpose:

- Section 1004 (Improving the Academic Achievement of Disadvantaged Children)
- Paragraphs (4) and (5) of section 1202(d) (Reading First)
- Section 2113(a)(3) (Teacher and Principal Training and Recruitment)
- Section 2412(a)(1) (Enhancing Education through Technology)
- Subsection (a) of section 4112 (Safe and Drug-Free Schools and Communities Governor’s funds, with agreement of the Governor)
- Subsection (b)(2) and (c)(1) of section 4112 (Safe and Drug-Free Schools and Communities SEA funds)
- Paragraphs (2) and (3) of section 4202(c) (21st Century Community Learning Centers)
- Section 5112(b) (Innovative Programs)

What funds may LEAs consolidate under State-Flex?

The four to ten LEAs that enter into performance agreements with their SEA in a State-Flex State may consolidate and use funds awarded to them *on a formula basis* under any of the following programs for any ESEA purpose:

- Subpart 2 of Part A of Title II (Teacher and Principal Training and Recruiting)
- Subpart 1 of Part D of Title II (Enhancing Education through Technology)
- Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Subpart 1 of Part A of Title V (Innovative Programs)

(NOTE: These funds are *not* limited to administrative funds, but apply to *all* funds awarded to the applicable LEAs on a formula basis under the listed programs.)

What control does a State-Flex State have with respect to funds awarded under Part A of Title V?

A State-Flex State may specify how all LEAs in the State (not just those with performance agreements) will use funds allocated under Part A of Title V (Innovative Programs), but must comply with the normal requirements in Part A of Title V for allocating those funds.

How do the LEA performance agreements under State-Flex compare to the Local-Flex agreements available to LEAs in non-State-Flex States?

The LEA performance agreements in State-Flex States are between the SEA and the LEA, not between the Secretary and the LEA. Ten LEAs may enter into performance agreements in each State-Flex State (for a total of not more than 70 performance agreements in the seven State-Flex States). This contrasts with the agreements authorized under the Local Flexibility Demonstration Program (“Local-Flex”) under chapter B of subpart 3 of Part A of Title VI. As explained in Section II, Local-Flex agreements are between the Secretary and the LEA. Under the Local-Flex program, the Secretary is authorized to enter into a total of 80 Local-Flex agreements with LEAs in States that do not have State-Flex authority. The same set of requirements governs the LEA performance agreements between SEAs and LEAs and the Local-Flex agreements between the Secretary and LEAs.

II. LOCAL FLEXIBILITY DEMONSTRATION PROGRAM (“LOCAL-FLEX”)

(ESEA Sections 6151 through 6156)

What is the Local Flexibility Demonstration Program?

The Local Flexibility Demonstration Program (Local-Flex) is a new flexibility program that authorizes the Secretary to enter into local flexibility demonstration agreements with a total of up to 80 local educational agencies (LEAs) in States that do not have State-Flex authority. Consistent with the purposes of the program, Local-Flex LEAs may consolidate and use certain Federal funds for any educational purpose authorized under the ESEA. Unlike the LEA performance agreements under State-Flex (which are between SEAs and LEAs), the flexibility agreements under Local-Flex are directly between the Secretary and LEAs.

How will the Secretary determine which LEAs will be given the opportunity to enter into Local-Flex agreements?

The Secretary will enter into Local-Flex agreements with LEAs on a competitive basis using a peer review process. The Department will announce the proposed selection criteria and process in the near future. The Secretary will coordinate the Local-Flex competition with the State-Flex competition.

What conditions must an LEA meet in order to be considered for Local-Flex?

To be considered for Local-Flex, an LEA must, among other things –

- Submit a proposed Local-Flex agreement that includes a five-year plan describing how the LEA would consolidate and use funds from programs included in the scope of the agreement to meet the State’s definition of adequate yearly progress, to advance the educational priorities of the LEA, to meet the general purposes of the included programs, to improve student achievement, and to narrow achievement gaps.
- Demonstrate that it has consulted with and involved parents and other educators in the development of the proposed Local-Flex agreement.
- Assure that it will meet the requirements of all applicable civil rights laws.
- Assure that it will provide for the equitable participation of students and professional staff in private schools.
- Be located in a State for which the Secretary has not granted State-Flex status.

What requirements govern the number of Local-Flex agreements that the Secretary may ratify?

As noted previously, the Secretary may enter into up to 80 Local-Flex agreements, all of which must be with LEAs in non-State-Flex States. There may be no more than three Local-Flex agreements per State, and the Secretary will ensure equitable distribution among urban and rural LEAs.

What funds may an LEA consolidate under Local-Flex?

Like LEAs that have entered into performance agreements in State-Flex States, Local-Flex LEAs may consolidate and use funds received *on a formula basis* under any of the following programs and, consistent with the purposes of the Local-Flex program, use those funds for any educational purpose permitted under the ESEA:

- Subpart 2 of Part A of Title II (Teacher and Principal Training and Recruiting)
- Subpart 1 of Part D of Title II (Enhancing Education through Technology)
- Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Subpart 1 of Part A of Title V (Innovative Programs)

(NOTE: These funds are *not* limited to administrative funds, but apply to *all* funds awarded on a formula basis to Local-Flex LEAs under the listed programs.)

III. TRANSFERABILITY

(ESEA Sections 6121 through 6123)

What is transferability?

Transferability is a new ESEA flexibility authority that allows States and local educational agencies (LEAs) to transfer a portion of the funds that they receive under certain Federal programs to other programs that most effectively address their unique needs and to allocations for certain activities under Title I.

What funds may a State transfer?

A State may transfer up to 50 percent of the non-administrative funds allotted to it to carry out State-level activities under each of the following provisions to one or more of its allotments under any of the other provisions listed below:

- Section 2113(a)(3) (Teacher and Principal Training and Recruitment)
- Section 2412(a)(1) (Enhancing Education Through Technology)
- Section 4112(a)(1) (Safe and Drug-Free Schools and Communities Governor's funds, with the agreement of the Governor)
- Section 4112(c)(1) (Safe and Drug-Free Schools and Communities SEA funds)
- Section 4202(c)(3) (21st Century Community Learning Centers)
- Section 5112(b) (Innovative Programs)

Subject to the 50% limitation, a State may also transfer funds allotted to it under the provisions listed above to its allotment under Part A of Title I to carry out State-level activities under Part A of Title I. A State may not transfer funds allocated under Part A of Title I to any other program.

What funds may an LEA transfer?

There are separate transferability provisions applicable to LEAs generally, to LEAs identified for improvement, and to LEAs identified for corrective action.

(a) LEA Transfers

An LEA (except an LEA identified for improvement under 1116(c) or subject to corrective action under section 1116(c)(9)) may transfer up to 50 percent of the funds allocated to it *by formula* under each of the following provisions to its allocation under any of the other provisions:

- Section 2121 (Teacher and Principal Training and Recruitment)
- Section 2412(a)(2)(A) (Enhancing Education Through Technology)
- Section 4112(b)(1) (Safe and Drug-Free Schools and Communities)
- Section 5112(a) (Innovative Programs)

With the exception noted above, and subject to the 50 percent limitation, an LEA may also transfer funds allocated by formula under the provisions noted above to its allocation under Part A of Title I. An LEA may not transfer funds allocated under Part A of Title I to any other program.

(b) Transfers by LEAs identified for improvement

An LEA identified for improvement under section 1116(c) may transfer not more than 30 percent of the funds allocated to it by formula under any of the provisions listed in paragraph (a) above to its allocation for school improvement under section 1003 or to any other allocation listed above if the transferred funds are used only for LEA improvement activities consistent with section 1116(c). The LEA may not transfer funds allocated under Part A of Title I to any other program.

(c) No transfers by LEAs identified for corrective action

An LEA identified for corrective action is prohibited from transferring funds under the transferability authority.

What requirements govern any funds that are transferred?

The transferred funds are subject to the requirements of the programs to which they are transferred.

What steps must a State take in transferring funds?

A State that makes a transfer of funds must modify its State plan or application to account for the transfer, notify the Secretary of the transfer at least 30 days before the effective date of the transfer, and submit a copy of the modification to the Secretary within 30 days of the transfer. If the transfer involves funds from a program that provides for equitable participation of students and staff in private schools, the State educational agency must conduct consultations as required by section 9501 of the ESEA.

What steps must an LEA take in transferring funds?

An LEA that makes a transfer of funds must modify its local plan or application to account for the transfer, notify its SEA of the transfer at least 30 days before the effective date of the transfer, and submit a copy of the modification to the SEA within 30 days of

the transfer. If the transfer involves funds from a program that provides for equitable participation of students and staff in private schools, the LEA must conduct consultations as required by section 9501 of the ESEA.

IV. RURAL EDUCATION INITIATIVES

(ESEA Sections 6201 through 6234)

What are the Rural Education Initiatives?

Part B of Title VI of the reauthorized ESEA contains three separate Rural Education Achievement Program (REAP) initiatives that are designed to help rural districts that lack the personnel and resources to compete effectively for Federal competitive grants and that receive grant allocations in amounts that are too small to be effective in meeting their intended purposes. The three initiatives – the Alternative Uses of Funds Authority; the Small, Rural School Grant Program; and the Rural and Low-Income School Program – are summarized separately below.

(1) ALTERNATIVE USES OF FUNDS AUTHORITY -- Section 6211

What is the REAP Alternative Uses of Funds Authority?

The REAP Alternative Uses of Funds Authority is a flexibility provision that allows eligible local educational agencies (LEAs) to combine “applicable funding” (which is defined as funding provided under subpart 2 and section 2412(a)(2)(A) of Title II, section 4114, and Part A of Title V) and use the applicable funding to carry out local activities under one or more of the following Federal programs:

- Part A of Title I (Improving the Academic Achievement of Disadvantaged Children)
- Part A of Title II (Teacher and Principal Training and Recruiting)
- Part D of Title II (Enhancing Education Through Technology)
- Title III (Language Instruction for Limited English Proficient and Immigrant Students)
- Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Part B of Title IV (21st Century Community Learning Centers)
- Part A of Title V (Innovative Programs)

Under the section 6211 Alternative Uses of Funds Authority, for example, an eligible LEA could use funds under the Safe and Drug-Free Schools and Communities program for activities authorized under the Title II technology program. Section 6211 does not provide LEAs with additional funding; rather, it gives them greater flexibility in using applicable funding.

What LEAs are eligible to take advantage of the flexibility offered under the REAP Alternative Uses of Funds Authority?

LEAs that meet the following conditions are eligible to take advantage of the flexibility offered under the REAP Alternative Uses of Funds Authority:

- The total number of students in average daily attendance in the schools served by the LEA is fewer than 600, or each county in which a school served by the LEA is located has a population density of fewer than 10 persons per square mile; and
- All schools served by the LEA have a school locale code of 7 or 8, unless the LEA's request for a waiver of the locale code requirement is granted. The Secretary may grant the waiver if the LEA demonstrates, with the concurrence of the SEA, that the LEA is located in an area defined as rural by a governmental agency of the State. (The locale codes of schools are listed on the website of the Department's National Center for Education Statistics (NCES) at <http://www.nces.ed.gov>.)

What steps must an eligible LEA take to use the REAP Alternative Uses of Funds flexibility?

An eligible LEA simply notifies its SEA, by a date established by the SEA, of its intention to use the "applicable funding" in accordance with the Alternative Uses of Funds Authority.

What accountability requirements apply to participating LEAs?

Participating LEAs must administer an assessment that is consistent with section 1111(b)(3) of Title I. After the third year that an LEA participates in the program, and on the basis on the results of the assessments, the State must determine whether the LEA has made adequate yearly progress. Only those LEAs that have made adequate yearly progress may continue to participate. Those LEAs that failed to make adequate yearly progress may continue to participate only if they use the applicable funding to carry out the requirements of section 1116 (Title I school improvement provisions).

2. SMALL, RURAL SCHOOL GRANT PROGRAM – Section 6212

What is the Small, Rural School Grant Program?

The Small, Rural School Grant Program is a program that authorizes the Secretary to award formula grants directly to eligible LEAs (i.e., those LEAs eligible under the alternative uses of funds program described above) to carry out activities authorized under one or more of the following federal programs:

- Part A of Title I (Improving the Academic Achievement of Disadvantaged Children)
- Part A of Title II (Teacher and Principal Training and Recruiting)
- Part D of Title II (Enhancing Education Through Technology)
- Title III (Language Instruction for Limited English Proficient and Immigrant Students)
- Part A of Title IV (Safe and Drug-Free Schools)
- Part B of Title IV (21st Century Community Learning Centers)
- Part A of Title V (Innovative Programs)

(NOTE: This is the same list of programs as the list under Alternative Uses of Funds Authority.)

How much funding will an eligible LEA receive?

The Secretary will determine an eligible LEA's grant amount pursuant to the formula in section 6212(b). The amount will range from \$20,000 to \$60,000, less the amount of "applicable funding" (which is defined as funding provided under subpart 2 and section 2412(a)(2)(A) of Title II, section 4114, and Part A of Title V) that the LEA received during the preceding year. The Secretary will ratably reduce LEA awards if insufficient funds are available to pay the full amounts LEAs are eligible to receive.

What steps must an LEA take in order to receive its grant award?

The legislation requires LEAs seeking funding to submit to the Secretary, not later than March 1 of each year, their average daily attendance (ADA) calculations (as determined under section 6231). The Secretary is requesting that LEAs submit the ADA data first to their SEA, and that SEAs submit the ADA data to the Department, not later than March 1, on behalf of all eligible LEAs in the State.

What accountability requirements apply to LEAs participating in the Small, Rural School Grant Program?

The accountability requirements described above with respect to the Alternative Uses of Funds Authority -- in which participating LEAs must administer assessments consistent with section 1113(b)(3) of Title I and States must determine whether LEAs have made adequate yearly progress -- also apply to the Small, Rural School Grant Program.

3. RURAL AND LOW-INCOME SCHOOL PROGRAM – Sections 6221 through Section 6224

What is the Rural and Low-Income School Program?

Designed to address the needs of rural, low-income schools, this program is one in which the Secretary awards formula grants to SEAs, which in turn award subgrants to eligible LEAs either competitively or on a formula basis. (There are special rules, described below, that apply if an SEA chooses not to participate in the program.)

How much funding will be allotted to each SEA?

An SEA's allotment will be determined on the basis of the number of students in average daily attendance served by eligible LEAs in the State compared to the number of all such students served by eligible LEAs in all States.

Does the Secretary reserve funds for the Bureau of Indian Affairs (BIA) and the outlying areas?

Yes. One-half of one percent of the funds appropriated for this program will be reserved to make awards to elementary or secondary schools operated or supported by BIA; one-half of one percent will be used to make awards to the outlying areas.

What LEAs are eligible to participate in the Rural and Low-Income School Program?

An LEA is eligible to receive a grant under this program if –

- 20 percent or more of the children ages 5 through 17 served by the LEA are from families with incomes below the poverty line;
- All of the schools served by the LEA have a school locale code of 6, 7, or 8 (The locale codes of schools are listed on the website of the Department's National Center for Education Statistics (NCES) at <http://www.nces.ed.gov>); and
- The LEA is not eligible to receive a Small, Rural School Grant under section 6212.

How does an SEA award funds to eligible LEAs?

An SEA awards funds to eligible LEAs either competitively or by formula. The formula requirements are set forth in section 6221(b)(2).

For what purposes may the grant funds be used?

Funds under this program may be used for –

- Teacher recruitment and retention
- Teacher professional development
- Educational technology as described in Part D of Title II
- Parental involvement activities
- Activities authorized under Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Activities authorized under Part A of Title I (Improving the Academic Achievement of Disadvantaged Children)
- Activities authorized under Title III (Language Instruction for Limited English Proficient and Immigrant Students)

What if an SEA chooses not to participate in the program?

If an SEA chooses not to participate in the program, the Secretary may use the SEA's allotment to award grants directly to eligible LEAs in that State either competitively or by formula for the purposes defined above. (Eligible LEAs in non-participating States are referred to as "specially qualified agencies" in the legislation.)

When must ADA data for eligible LEAs be submitted to the Department?

In order that the Secretary can calculate the amount of each State's allotment on a timely basis, the legislation requires that ADA data for eligible LEAs be submitted to the Department not later than March 1 of each year. The Secretary is requesting that SEAs submit the ADA data to the Department, not later than March 1, on behalf of eligible LEAs in the State.

What accountability requirements apply to districts participating in the Rural and Low-Income School Program?

The accountability requirements in section 6224(d) and (e) apply to districts participating in this program. These requirements -- in which participating LEAs must administer assessments consistent with section 1113(b)(3) of Title I and States (or the Secretary, in the case of specially qualified agencies) must determine whether LEAs have made adequate yearly progress -- are similar to those applicable to districts participating in the Alternative Uses of Funds Authority and the Small, Rural School Grant Program.

V. EDUCATION FLEXIBILITY PARTERSHIP ACT ("ED-FLEX")

What is Ed-Flex?

Ed-Flex is a program that authorizes the Secretary to delegate to State educational agencies (SEAs) with strong accountability safeguards the authority to waive requirements of certain State-administered formula grant programs. Once delegated Ed-Flex authority, an SEA may waive requirements that, in particular instances, may impede the ability of local educational agencies (LEAs) or schools in carrying out educational reforms and in raising the achievement levels of all students.

Ed-Flex was first enacted as a demonstration program in 1994, and initially authorized the Secretary to give Ed-Flex authority to six States. In 1996, revisions to the Ed-Flex legislation authorized the Secretary to delegate Ed-Flex status to six additional States. The Education Flexibility Partnership Act of 1999, which remains in effect, provides any State that meets the Ed-Flex eligibility requirements an opportunity to participate in Ed-Flex. Currently, ten States have Ed-Flex waiver authority under the 1999 Ed-Flex legislation (CO, DE, KS, MA, MD, NC, OR, PA, TX, and VT).

What changes did the No Child Left Behind Act of 2001 make to the Ed-Flex legislation?

Section 1073 of the No Child Left Behind Act updated the list of programs that are subject to Ed-Flex waiver authority. As revised, the Ed-Flex legislation permits Ed-Flex states to waive requirements of the following State-administered formula grant programs:

- Part A of Title I (other than sections 1111 and 1116) (Improving the Academic Achievement of Disadvantaged Children)
- Subpart 3 of Part B of Title I (Even Start Family Literacy Programs) (NOTE: Ed-Flex states may *not* waive requirements of the new Reading First or Early Reading First Programs (subparts 1 and 2 of Part B of Title I))
- Part C of Title I (Education of Migratory Children)
- Part D of Title I (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk)
- Part F of Title I (Comprehensive School Reform)
- Subparts 2 and 3 of Part A of Title II (Teacher and Principal Training and Recruiting)
- Subpart 1 of Part D of Title II (Enhancing Education through Technology)
- Subpart 4 of Part B of Title III (Emergency Immigrant Education, if this program is funded)
- Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Part A of Title V (Innovative Programs)
- The Carl D. Perkins Vocational and Technical Education Act

What are the basic conditions that a State must meet to be eligible to participate in the Ed-Flex program?

To be eligible to participate in Ed-Flex, a State must –

- Have developed and implemented the standards and assessments required under Title I;
- Hold districts and schools accountable for meeting the educational goals described in their local waiver applications and for engaging in technical assistance and corrective actions consistent with Title I for districts and schools that do not make adequate yearly progress; and
- Waive State statutory or regulatory requirements relating to education while holding districts and schools that are affected by the waivers accountable for the performance of students.

The No Child Left Behind Act did not change the Ed-Flex eligibility provisions, which link Ed-Flex eligibility to compliance with Title I assessment and accountability requirements. However, substantial changes have been made to the Title I requirements. The Department is preparing supplemental Ed-Flex guidance that will address the impact of the new Title I requirements on an SEA's eligibility for Ed-Flex.

VI. ESEA SECRETARIAL WAIVERS

(ESEA Section 9401)

Does the ESEA authorize the Secretary to grant waivers of ESEA requirements?

Yes. Section 9401 of the ESEA authorizes the Secretary to waive ESEA requirements applicable to State educational agencies (SEAs), local educational agencies (LEAs), Indian tribes, or schools, subject to the limitations and criteria in the legislation. The waiver provisions are very similar to the provisions in Section 14401 of the predecessor ESEA.

What programs are covered by the Secretary's section 9401 waiver authority?

The waiver authority applies to any ESEA program that provides funds to SEAs, LEAs, Indian tribes, or schools, except Impact Aid programs under Title VIII.

What information must be included in a waiver request?

Each request for a waiver must –

- Identify the Federal programs affected by the waiver;
- Describe which Federal requirements are to be waived and how the waiver will increase the quality of instruction for students and improve the academic achievement of students;
- Describe, for each year, specific, measurable educational goals, in accordance with section 1111(b), for the SEA (if applicable) and each LEA, Indian tribe, or school that would be affected by the waiver and the methods to be used to measure annually progress for meeting those goals and outcomes;
- Explain how the waiver will assist the SEA (if applicable) and each affected LEA, Indian tribe, or school in reaching those goals; and
- Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.

Is a waiver applicant required to provide interested parties with notice of its waiver request?

Yes. Waiver applicants must meet the relevant notice requirements in section 9401(b)(3) of the legislation.

Are there certain requirements that the Secretary may not waive?

Yes. The waiver limitations (in section 9401(c)) are the same as those in the predecessor waiver legislation, with the addition of a new restriction (similar to that applicable to Ed-Flex States) that precludes the Secretary from waiving requirements relating to the selection of a school attendance area or school under subsections (a) and (b) of section 1113 of Title I, except that the Secretary may grant a waiver to allow a school attendance area or school to participate in activities under Part A of Title I if the percentage of children from low-income families in that school attendance area or school is within 10 percentage points of the percentage of children from low-income families in the lowest eligible Title I school attendance area or school.

For what period of time may a waiver be granted?

The Secretary is authorized to grant a waiver for a period of up to 4 years. The period may be extended if the Secretary determines that the waiver has been effective in enabling the recipient to carry out the activities for which the waiver was requested, the waiver has contributed to improved student achievement, and the extension is in the public interest.

Are there reporting requirements applicable to waiver recipients?

Yes. Waiver recipients must submit reports as required under section 9401(e).

VII. CONSOLIDATION OF STATE AND LOCAL ADMINISTRATIVE FUNDS

(ESEA Sections 9201 and 9203)

1. SEA CONSOLIDATION

What flexibility does the ESEA provide to a State educational agency (SEA) regarding consolidating administrative funds?

An SEA may consolidate funds specifically made available to it for state administration under any ESEA program, as well as other programs that the Secretary may designate. An SEA may consolidate State administrative funds only if it can demonstrate that the majority of its resources are derived from non-Federal sources. (NOTE: Under the predecessor ESEA statute, an SEA could consolidate only those State administrative funds made available under Title I, Goals 2000, and “covered programs” as defined in the predecessor ESEA.)

For what purposes may an SEA use consolidated State administrative funds?

An SEA may use consolidated State administrative funds to administer the programs included in the consolidation, and for administrative activities designed to enhance the effective and coordinated use of funds under those programs. In addition, an SEA may use the funds to develop the standards and assessments required under Title I.

What if an SEA does not use all of the funds made available for administration?

If an SEA does not use all of the funds made available for administration, the SEA may use those funds during the applicable period of fund availability as funds available under one or more of the programs included in the consolidation.

2. LEA CONSOLIDATION

What flexibility does the ESEA provide to a local educational agency (LEA) regarding consolidating administrative funds?

In accordance with any regulations issued by the Secretary and with approval of its SEA, an LEA may consolidate and use for the administration of one or more programs under the ESEA (as well as other programs that the Secretary may designate) not more than the percentage, established in each program, of the total available for the LEA for administration under those programs. (NOTE: Under the predecessor ESEA statute, an

LEA could consolidate only those administrative funds made available under “covered programs” as defined in the predecessor ESEA.)

Within a year of enactment of the No Child Left Behind Act and in collaboration with LEAs in the State, each SEA must establish procedures for responding to LEA requests to consolidate administrative funds and for establishing limitations on the amount of funds under those programs that can be used for administration on a consolidated basis.

For what purposes may an LEA use consolidated administrative funds?

An LEA may use consolidated administrative funds to administer the programs included in the consolidation and for uses, at the district and school levels, designed to enhance the effective and coordinated use of funds under those programs.

What limitations apply to LEAs that consolidate administrative funds?

An LEA that consolidates administrative funds for any fiscal year may not use any other funds under the programs included in the consolidation for administration for that fiscal year.

VIII. CONSOLIDATED APPLICATIONS

(ESEA Sections 9301 through 9306)

May States seek funding under ESEA formula grant programs through submission of a consolidated application?

Yes. Sections 9301 and 9302 offer states the option of seeking funding under most ESEA formula grant programs through consolidated applications or plans instead of through individual program plans or applications that the law otherwise would require.

Do local educational agencies (LEAs) have the option of seeking funding through submission of consolidated local applications or plans?

Yes. Section 9305 extends similar flexibility to LEAs. Furthermore, a State educational agency (SEA) that has an approved consolidated State application or plan may require LEAs in the State to submit consolidated local applications or plans under those programs included in the consolidated State application or plan. An SEA may not require LEAs to submit individual program applications or plans if they wish to submit consolidated applications.

What programs may be included in a consolidated application or plan?

“Covered programs” as defined in section 9101(13) may be included in a consolidated application or plan. They are programs under –

- Part A of Title I (Improving the Academic Achievement of Disadvantaged Children)
- Subpart 3 of Part B of Title I (Even Start Family Literacy)
- Part C of Title I (Education of Migrant Children)
- Part D of Title I (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk)
- Part F of Title I (Comprehensive School Reform)
- Part A of Title II (Teacher and Principal Training and Recruiting)
- Part D of Title II (Enhancing Education Through Technology)
- Part A of Title III (English Language Acquisition, Language Enhancement and Academic Achievement)
- Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Part B of Title IV (21st Century Community Learning Centers)
- Part A of Title V (Innovative Programs)
- Subpart 2 of Part B of Title VI (Rural and Low-Income School Program)

The Secretary is also authorized to designate other programs that may be included in a consolidated application or plan.

What are the Department's plans for implementing the consolidated State application provisions?

On January 4, 2002, the Department published in the *Federal Register* a notice requesting public comment on its initial plans for implementing the consolidated State application provisions (as well as the consolidated annual reporting provision). See 67 Fed. Reg. 571-574. The Department expects to publish in February, for public review and comment, a separate notice in the *Federal Register* proposing criteria and procedures to govern the consolidated application and annual State report.

IX. SCHOOLWIDE PROGRAMS

(ESEA Section 1114)

What is the purpose of schoolwide programs?

The purpose of schoolwide programs is to allow a school to use resources effectively and efficiently to undertake comprehensive reform of the entire educational program in the school to assist all children, particularly the lowest achieving children, to meet the high state academic achievement standards.

What is the minimum poverty threshold required for implementing schoolwide programs under the reauthorized ESEA?

The minimum poverty threshold required for implementing schoolwide programs under the reauthorized ESEA is *40 percent*. Section 1114 permits an LEA to consolidate and use funds under Part A of Title I, together with other Federal, State, and local funds, in order to upgrade the entire educational program of a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children enrolled in the school are from low-income families.

What are the general requirements governing schoolwide plans?

In consultation with its local educational agency (LEA) and its school support team or other technical assistance provider under section 1117, an eligible school that desires to operate a schoolwide program must develop (or amend, as applicable) a comprehensive plan for reforming the total instructional program in the school that –

- Describes how the school will implement the components of a schoolwide program as described in section 1114(b)(1);
- Describes how the school will use resources under Part A of Title I and from other sources to implement those components;
- Includes a list of state educational agency and LEA programs and other applicable Federal programs that will be consolidated in the schoolwide program; and
- Describes how the school will provide individual student academic results in a language the parents can understand, including an interpretation of those results, to the parents of a child who participates in the academic assessments required under section 1111(b)(3) of Title I.

Must a school account separately for funds from different Federal programs that are consolidated in a schoolwide program?

No. A school that consolidates and uses funds from different Federal programs to support a schoolwide program is not required to maintain separate fiscal accounting records, by program, that identify how those funds were spent, as long as the school can demonstrate that the schoolwide program as a whole addresses the intent and purposes of each program whose funds were consolidated.