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**GUIDANCE**

**ON**

**TRANSITIONING FROM ESEA FLEXIBILITY TO  
THE ELEMENTARY AND SECONDARY EDUCATION ACT  
OF 1965, AS AMENDED**

**U.S. Department of Education**

**Office of Elementary and Secondary Education**

**December 16, 2014**

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## INTRODUCTION

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On September 23, 2011, the U.S. Department of Education (ED) offered each State educational agency (SEA) the opportunity to request flexibility from certain requirements of the Elementary and Secondary Education Act of 1965, as amended (ESEA), on behalf of itself, its local educational agencies (LEAs), and its schools (ESEA flexibility).

ED believes that ESEA flexibility provides an opportunity to move forward with key State-led reform efforts, increase the quality of instruction, and improve academic achievement for all students; however, we also understand that some States may, for a variety of reasons, need resume compliance with all requirements of the ESEA, including those that were waived under ESEA flexibility. ED has prepared this guidance to support SEAs and LEAs in making such a transition back to compliance with existing law.

If you are interested in commenting on this guidance, please send your comments via e-mail to [OESEGuidanceDocument@ed.gov](mailto:OESEGuidanceDocument@ed.gov) using the subject line “Transitioning From ESEA Flexibility To The ESEA Guidance” or send your comments to us at the following address:

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## **GENERAL GUIDANCE ON TRANSITIONING FROM IMPLEMENTING ESEA FLEXIBILITY TO RESUMING COMPLIANCE WITH ALL PROVISIONS OF THE ESEA**

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This document provides general guidance for an SEA that is transitioning from implementing ESEA flexibility to resuming compliance with all requirements of the ESEA. An SEA that is approved to implement ESEA flexibility through the end of a particular school year will be expected to resume full implementation of the ESEA in the school year immediately following the termination of, expiration of, or withdrawal from, ESEA flexibility.

### **1. What are the ESEA requirements that are waived under ESEA flexibility with which an SEA and its LEAs must resume compliance if they transition back to the ESEA?**

The table that follows, which has also been issued as a stand-alone document available at <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/cssoenclosure.doc>, sets forth each ESEA requirement that could be waived under ESEA flexibility, a description of the requirement, a description of the waiver that is being terminated, and a brief overview of what the SEA and its LEAs, as applicable, must do to resume compliance with the requirement. The questions that follow provide additional information about resuming full compliance with the ESEA.

	<b>ESEA SECTION<sup>1</sup></b>	<b>DESCRIPTION OF REQUIREMENT</b>	<b>DESCRIPTION OF WAIVER BEING TERMINATED</b>	<b>RESUMING COMPLIANCE WITH ESEA REQUIREMENT<sup>2</sup></b>
(1)	1003(a) <sup>3</sup>	The ESEA requires an SEA to reserve four percent of its Title I, Part A allocation for school improvement activities and to distribute at least 95 percent of that reservation to LEAs for use in Title I schools in improvement, corrective action, or restructuring.	ESEA flexibility does not waive this reservation; ESEA flexibility permits an SEA to distribute section 1003(a) funds to LEAs for use in priority and focus schools.	Beginning with the first allocation of ESEA section 1003(a) funds following the termination of ESEA flexibility, an SEA must allocate funds only for use in Title I schools in improvement, corrective action, or restructuring.
(2)	1003(g)	The ESEA requires an SEA to award School Improvement Grant (SIG) funds to LEAs for Title I schools in improvement, corrective action, or restructuring.	ESEA flexibility permits an SEA to award SIG funds to an LEA to implement one of the four SIG models in any priority school.	Beginning with the first new awards of SIG funds following the termination of ESEA flexibility, an SEA may award SIG funds only for Tier I, Tier II, or Tier III schools under the SIG program. To the extent the SEA has already used this flexibility to award SIG funds to LEAs for priority schools that are not Tier I, Tier II, or Tier III schools, it may continue to fund such schools for the remainder of their three-year SIG grants.
(3)	1111(b)(2)(E) – (H) <sup>4</sup>	The ESEA establishes the requirements for annual measurable objectives (AMOs).	ESEA flexibility permits an SEA to set new ambitious but achievable AMOs.	An SEA must determine AMOs in accordance with ESEA section 1111(b)(2)(E) – (H), which for the 2013–2014 school year will require 100 percent proficiency for the “all

<sup>1</sup> The corresponding regulations that implement these statutory provisions of the Elementary and Secondary Education Act of 1965, as amended (ESEA), were also waived for States implementing ESEA flexibility.

<sup>2</sup> Timelines in this chart are applicable to SEAs and LEAs transitioning from ESEA flexibility to the ESEA following the 2013–2014 school year.

<sup>3</sup> In general, ESEA section 1003 provides school improvement requirements.

<sup>4</sup> In general, ESEA section 1111 provides State plan requirements.

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				students” group and for all subgroups identified in ESEA section 1111(b)(2)(C)(v).
(4)	1114(a)(1) <sup>5</sup>	The ESEA requires that a school have at least a 40 percent poverty rate to be eligible to operate a schoolwide program.	ESEA flexibility permits an LEA to operate a schoolwide program in a priority school or a focus school that has less than a 40 percent poverty rate that is implementing a schoolwide intervention.	Consistent with 34 C.F.R. section 200.25(b)(1)(ii), any school that operated a schoolwide program in the most recent school year may continue to operate a schoolwide program. Beginning with the 2014–2015 school year, a school that has less than a 40 percent poverty rate and did not begin implementing a schoolwide program under ESEA flexibility in the 2012–2013 or 2013–2014 school year may not begin doing so.

<sup>5</sup> In general, ESEA section 1114 provides schoolwide program requirements.

	<b>ESEA SECTION<sup>1</sup></b>	<b>DESCRIPTION OF REQUIREMENT</b>	<b>DESCRIPTION OF WAIVER BEING TERMINATED</b>	<b>RESUMING COMPLIANCE WITH ESEA REQUIREMENT<sup>2</sup></b>
(5)	1116(a)(1)(A) – (B) and 1116(c)(1)(A) <sup>6</sup>	The ESEA requires an SEA and its LEAs to make adequate yearly progress (AYP) determinations for LEAs and schools, respectively.	ESEA flexibility waives the requirements for an SEA and its LEAs to make AYP determinations.	<p>An SEA and its LEAs must resume making AYP determinations in accordance with the ESEA requirements beginning with AYP determinations based on the results of assessments administered in the 2013–2014 school year.<sup>7</sup></p> <p><u>AMOs</u> An SEA must use AMOs determined in accordance with ESEA section 1111(b)(2)(E) – (H), which for the 2013–2014 school year will require 100 percent proficiency for the “all students” group and for all subgroups identified in ESEA section 1111(b)(2)(C)(v).</p> <p><u>Safe Harbor</u> A school may also make AYP under ESEA section 1111(b)(2)(I)(i) (<i>i.e.</i>, “safe harbor”), which provides that a school will be considered to have made AYP if the percentage of students not proficient decreases by 10 percent from the percentage of students not proficient in the preceding school year.</p>

<sup>6</sup> In general, ESEA section 1116 provides LEA and school improvement requirements.

<sup>7</sup> States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

	<b>ESEA SECTION<sup>1</sup></b>	<b>DESCRIPTION OF REQUIREMENT</b>	<b>DESCRIPTION OF WAIVER BEING TERMINATED</b>	<b>RESUMING COMPLIANCE WITH ESEA REQUIREMENT<sup>2</sup></b>
(6)	1116(b) (except (b)(13))	The ESEA requires LEAs to identify schools for improvement, corrective action, or restructuring and to implement the corresponding requirements.	ESEA flexibility waives the requirement for an LEA to identify schools for improvement, corrective action, or restructuring and to implement the corresponding requirements.	<p>An LEA must resume identifying schools for improvement, corrective action, or restructuring. In doing so, the LEA must advance a school along the school improvement timeline under ESEA section 1116(b)(2) - (8) based on the school's status in the 2011–2012 school year.</p> <p>In addition, schools and the LEA must resume implementing the corresponding requirements for the 2014–2015 school year. These requirements include, but are not limited to, the requirement that the LEA spend an amount equal to 20 percent of its Title I allocation to provide supplemental educational services (SES) and transportation for public school choice to eligible students; the requirement that the LEA provide, not fewer than fourteen days prior to the first day of the school year, all students enrolled in a school identified for improvement, corrective action, or restructuring with notice of the public school choice option; and the requirement that the LEA provide all low-income students enrolled in a school identified for the second year of improvement, corrective action, or restructuring with the option to take advantage of SES.</p>

	<b>ESEA SECTION<sup>1</sup></b>	<b>DESCRIPTION OF REQUIREMENT</b>	<b>DESCRIPTION OF WAIVER BEING TERMINATED</b>	<b>RESUMING COMPLIANCE WITH ESEA REQUIREMENT<sup>2</sup></b>
(7)	1116(c)(3) and (5) – (11)	The ESEA requires an SEA to identify LEAs for improvement or corrective action and to implement the corresponding requirements.	ESEA flexibility waives the requirement for an SEA to identify LEAs for improvement or corrective action and to implement the corresponding requirements.	<p>An SEA must resume identifying LEAs for improvement or corrective action. In doing so, the SEA must advance an LEA along the LEA improvement timeline under ESEA section 1116(c)(3) – (10) based on the LEA’s status in the 2011–2012 school year.</p> <p>In addition, the SEA and its LEAs must resume implementing the corresponding requirements for the 2014–2015 school year. These requirements include, but are not limited to, the requirement that the SEA promptly provide notice to the parents of each student enrolled in a school served by an LEA identified for improvement that includes the results of the SEA’s annual review of the progress of the identified LEA, the reasons for that identification, and how parents can participate in upgrading the quality of the LEA. These requirements also include, but are not limited to, the requirement that LEAs identified for improvement shall, not later than three months after being identified, develop or revise an LEA plan that, among other things, addresses the professional development needs of the instructional</p>

	<b>ESEA SECTION<sup>1</sup></b>	<b>DESCRIPTION OF REQUIREMENT</b>	<b>DESCRIPTION OF WAIVER BEING TERMINATED</b>	<b>RESUMING COMPLIANCE WITH ESEA REQUIREMENT<sup>2</sup></b>
				staff serving the agency by committing to spend not less than 10 percent of the Title I, Part A funds received by the LEA, excluding funds reserved for professional development under ESEA section 1119.
(8)	1116(e)	The ESEA requires an SEA and its LEAs to take a variety of actions to offer SES to eligible students in schools in improvement, corrective action, or restructuring.	ESEA flexibility waives the requirements for an SEA and its LEAs regarding offering SES.	An SEA and its LEAs must resume the necessary actions to offer SES to eligible students in schools in the second year of improvement, corrective action, or restructuring, for the 2014–2015 school year. These actions include, but are not limited to, the requirements that each LEA with schools in the second year of improvement, corrective action, or restructuring provides annual notice to parents of the availability of SES, the identity of approved providers of SES, and a brief description of the services, qualifications, and demonstrated effectiveness of each SES provider.
(9)	1117(b)(1)(B) <sup>8</sup>	The ESEA limits the schools that may receive Title I, Part A funds reserved for the State awards program.	ESEA flexibility permits funds reserved for the State awards program to go to any Title I-eligible reward school.	Beginning with awards made following AYP determinations based on the results of assessments administered in the 2013–2014 school year, <sup>9</sup> an SEA may award funds reserved under ESEA

<sup>8</sup> In general, ESEA section 1117 provides school support and recognition requirements.

<sup>9</sup> States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

	<b>ESEA SECTION<sup>1</sup></b>	<b>DESCRIPTION OF REQUIREMENT</b>	<b>DESCRIPTION OF WAIVER BEING TERMINATED</b>	<b>RESUMING COMPLIANCE WITH ESEA REQUIREMENT<sup>2</sup></b>
				section 1117(c)(2) only to a school that significantly closed the achievement gap between subgroups of students or exceeded AYP for two or more consecutive years. For purposes of determining if a school exceeded AYP in the 2012–2013 school year, the SEA should determine if the “all students” group and all subgroups in the school met their AMOs in reading/language arts and mathematics, the 95 percent participation rate requirement, and the State’s graduation rate goal or targets or, for middle and elementary schools, if the school met the other academic indicator.
(10)	2141(a), (b), (c) <sup>10</sup>	The ESEA requires an LEA improvement plan for an LEA that fails to make progress toward reaching objectives for highly qualified teachers for two consecutive years, technical assistance from the SEA in developing the improvement plan, and SEA/LEA agreement on use of Title II, Part A funds for an LEA that misses AYP and fails to make progress toward reaching annual objectives for highly qualified	ESEA flexibility waives each of these requirements for an LEA and SEA and lifts the restriction on the use of Title II, Part A funds.	An SEA and its LEAs must resume complying with these requirements for the 2014–2015 school year. To meet the improvement plan and technical assistance requirements of ESEA sections 2141(a) and (b), an SEA and its LEAs must use highly qualified teacher data from both the 2012–2013 and 2013–2014 school years. To meet the SEA/LEA agreement requirements of ESEA section 2141(c), an SEA and its LEAs must use highly qualified

<sup>10</sup> In general, ESEA section 2141 provides the technical assistance and accountability requirements for SEAs and LEAs in preparing, training, and recruiting high quality teachers.

	<b>ESEA SECTION<sup>1</sup></b>	<b>DESCRIPTION OF REQUIREMENT</b>	<b>DESCRIPTION OF WAIVER BEING TERMINATED</b>	<b>RESUMING COMPLIANCE WITH ESEA REQUIREMENT<sup>2</sup></b>
		teachers for three consecutive years.		<p>teacher data from the 2011–2012, 2012–2013, and 2013–2014 school years and AYP data from the 2011–2012, 2012–2013, and 2013–2014 school years.</p> <p>For purposes of determining if an LEA failed to make AYP in the 2011–2012 and 2012–2013 school years, the SEA should determine if the “all students” group or any subgroup in the school missed any of its AMOs in reading/language arts and mathematics, the 95 percent participation rate requirement, or the State’s graduation rate goal or targets or, for middle and elementary schools, if the school missed the other academic indicator.</p>
(11)	6123(a) <sup>11</sup>	The ESEA limits to 50 percent the amount an SEA may transfer from a covered program into another covered program or into Title I, Part A.	ESEA flexibility waives the percentage limitation, thereby permitting an SEA to transfer up to 100 percent of funds from a covered program.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA must comply with the 50 percent limitation on the amount it may transfer from a covered program into another covered program or into Title I, Part A.
(12)	6123(b)(1)	The ESEA limits to 50 percent or 30 percent the amount an LEA may	ESEA flexibility waives the percentage limitations as well as	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1,

<sup>11</sup> In general, ESEA section 6123 provides the requirements subject to which an SEA and its LEA may transfer funds.

	<b>ESEA SECTION<sup>1</sup></b>	<b>DESCRIPTION OF REQUIREMENT</b>	<b>DESCRIPTION OF WAIVER BEING TERMINATED</b>	<b>RESUMING COMPLIANCE WITH ESEA REQUIREMENT<sup>2</sup></b>
		transfer from a covered program into another covered program or into Title I, Part A.	the restrictions on the use of transferred funds.	2014, LEAs must comply with the 50 percent or 30 percent (as applicable) amount it may transfer from a covered program into another covered program or into Title I, Part A. An LEA in corrective action is no longer eligible to transfer funds.
(13)	6123(d)	The ESEA requires modification of plans to account for transfer and notice of transfer to the Secretary or the SEA, as appropriate.	ESEA flexibility waives these requirements for an SEA and its LEAs.	Beginning with transfers made with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA and its LEAs must resume complying with these requirements.
(14)	6123(e)(1)	The ESEA subjects transferred funds to the requirements of the program to which they are transferred.	ESEA flexibility permits an LEA to exclude funds transferred into Title I, Part A from the base in calculating any set-aside percentages.	Beginning with transfers made with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA and its LEAs must resume complying with this requirement— <i>i.e.</i> , include funds transferred into Title I, Part A in the base for calculating any set-aside percentages.
(15)	6213(b)	The ESEA requires LEAs that fail to make AYP to use funds to carry out the requirements under ESEA section 1116.	ESEA flexibility permits an LEA that receives these funds to use them for any authorized purpose, regardless of whether the LEA made AYP.	An LEA that receives these funds and fails to make AYP based on the results of assessments administered in the 2013–2014 school year <sup>12</sup> must resume using the funds only to carry out the requirements of ESEA section 1116 in the 2014–2015 school year.

<sup>12</sup> States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

	<b>ESEA SECTION<sup>1</sup></b>	<b>DESCRIPTION OF REQUIREMENT</b>	<b>DESCRIPTION OF WAIVER BEING TERMINATED</b>	<b>RESUMING COMPLIANCE WITH ESEA REQUIREMENT<sup>2</sup></b>
(16)	6224(e) <sup>13</sup>	The ESEA requires an SEA to permit an LEA that fails to make AYP to continue to receive a Small, Rural School Achievement grant only if the LEA uses funds to carry out ESEA section 1116.	ESEA flexibility permits an LEA that receives these funds to use them for any authorized purpose, regardless of whether the LEA made AYP.	An LEA that receives these funds and fails to make AYP based on the results of assessments administered in the 2013–2014 school year <sup>14</sup> must resume using the funds only to carry out the requirements of ESEA section 1116 in the 2014–2015 school year.
(17)	4201(b)(1)(A), 4204(b)(2)(A) <sup>15</sup>	The ESEA requires a 21 <sup>st</sup> Century Community Learning Center (21 <sup>st</sup> CCLC) to provide activities during nonschool hours or periods when school is not in session.	ESEA flexibility permits an eligible entity to provide 21 <sup>st</sup> CCLC activities to support expanded learning time during an expanded school day, week, or year in addition to activities during hours or periods when school is not in session.	Beginning with the first 21 <sup>st</sup> CCLC competition conducted after the termination of ESEA flexibility, eligible entities may apply only to provide activities during nonschool hours or periods when school is not in session.
(18)	1113(a)(3) – (4) and (c)(1)	The ESEA requires an LEA to rank and serve eligible schools according to poverty and allocate Title I funds to schools in rank order of poverty.	ESEA flexibility permits LEAs to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school does not rank sufficiently high to be served based solely on the school's poverty rate.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, LEAs must resume ranking and serving eligible schools according to poverty alone and allocating Title I funds to schools in rank order of poverty.

<sup>13</sup> ESEA section 6224(e) provides the requirements subject to which determinations of continuing participation in the Small, Rural School Achievement Program shall be made.

<sup>14</sup> States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

<sup>15</sup> In general, ESEA sections 4201 and 4204 provide the requirements of the 21<sup>st</sup> Century Community Learning Centers Program.

**2. What is the timeline under which an SEA must transition from implementing ESEA flexibility to resuming compliance with all provisions of the ESEA?**

In general, an SEA that is approved to implement ESEA flexibility through the end of a particular school year must resume fully implementing the ESEA in the school year immediately following the termination or expiration of, or withdrawal from, ESEA flexibility. For example, if an SEA's ESEA flexibility expires at the end of the 2014–2015 school year, the SEA must resume implementing all ESEA requirements no later than the beginning of the 2015–2016 school year, including, but not limited to, identifying schools and LEAs for improvement, corrective action, or restructuring, as appropriate under ESEA sections 1116(b) and (c), for the 2015–2016 school year (*see* Questions 7 and 8). In order to make such identifications, an SEA and its LEAs must also make timely adequate yearly progress (AYP) determinations based on assessments administered in the 2014–2015 school year.

An SEA that withdraws from or has its ESEA flexibility request terminated during the course of a school year must work with ED to determine the appropriate timeline under which to resume full compliance with all requirements of the ESEA.

**3. How must an SEA that is no longer implementing ESEA flexibility, and its LEAs, make AYP determinations?**

An SEA and its LEAs that are no longer implementing ESEA flexibility must make AYP determinations for LEAs and schools, respectively, in accordance with ESEA sections 1116(a)(1)(A) – (B) and 1116(c)(1)(A). For an LEA or school to make AYP: (1) the “all students” group and all subgroups identified in ESEA section 1111(b)(2)(C)(v)(II) must meet the requisite annual measurable objectives (AMOs); (2) at least 95 percent of the “all students” group, and each subgroup identified in ESEA section 1111(b)(2)(C)(v)(II) must participate on State assessments in reading/language arts and mathematics; and (3) the LEA or school must meet the other academic indicator, which for high schools means having the “all students” group and each subgroup meet the graduation rate goal or target and for elementary and middle schools means having the “all students” group meet the other academic indicator. The only exception to these requirements is that even if one or more subgroups misses its AMOs, under ESEA section 1111(b)(2)(I)(i) — the so-called “safe harbor” provision — a school is considered to have made AYP if the percentage of students not proficient in the subgroup or subgroups that miss the AMO decreases by 10 percent from the percentage of students not proficient in the preceding school year (*see* Question 1, row 5; *see also* Question 5).

**4. What AMOs must an SEA resume using under the ESEA?**

An SEA that is no longer implementing ESEA flexibility must use AMOs calculated in accordance with ESEA sections 1111(b)(2)(E) – (H) in making AYP determinations. For the 2014–2015 school year and all future school years, these AMOs require 100 percent proficiency for the “all students” group and for each subgroup identified in ESEA section 1111(b)(2)(C)(v)(II) (*see* Question 1, row 3).

**5. How will an LEA determine if a school has made AYP under the “safe harbor” provision?**

Under ESEA section 1111(b)(2)(I)(i) (*i.e.*, “safe harbor”), a school will be determined to have made AYP if the percentage of students not proficient decreases by 10 percent from the percentage of students not proficient in the preceding school year. For example, consider a school in which one subgroup identified under ESEA section 1111(b)(2)(C)(v)(II) did not achieve 100 percent proficiency based on the results of assessments administered in the 2014–2015 school year; rather, 73 percent were proficient and 27 percent were not proficient. In the 2013–2014 school year, 70 percent were proficient and 30 percent were not proficient. As a result, the school would make AYP due to safe harbor (*see* Question 1, row 3) because the percentage of students in the subgroup who were not proficient decreased by at least 10 percent from the preceding school year. Although a school that was operating under ESEA flexibility in the 2013–2014 school year might not have received an AYP determination for that school year, its LEA was obligated to report proficiency rates for the school and, therefore, should be able to make this safe harbor calculation.

**6. How will an SEA determine whether an LEA has met annual measurable achievement objective (AMAO) 3 under Title III of the ESEA the first year it resumes full compliance with the ESEA?**

Under ESEA section 3122(a)(3)(A)(iii), an SEA must determine if an LEA has met AMAO 3 based on AYP as described in ESEA section 1111(b)(2)(B). AMAO 3 is based on whether the SEA and its LEAs meet the State’s AYP targets for the limited English proficient (LEP) subgroup in reading/language arts and mathematics. As described in Question 3, an SEA that is no longer implementing ESEA flexibility must make AYP determinations for LEAs in accordance with ESEA section 1116(c)(1)(A); and those AYP determinations must be used to determine whether an LEA has met AMAO 3. English AMAO 3 determinations must also include participation rates on State assessments in reading/language arts and mathematics and graduation rates. All SEAs must also comply with the Notice of Final Interpretations of Title III, Part A (NOI), published in the *Federal Register* on October 17, 2008 (73 Fed. Reg. 61828, available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/q-and-a-on-elp-swd.pdf>). The NOI indicates that an LEA “must meet district-level AYP targets for all grade spans (if grade spans are used) for both mathematics and reading/English language arts”.

**7. How will an SEA identify its LEAs for improvement or corrective action in the first year it resumes full compliance with the ESEA?**

Consistent with the requirements of ESEA section 1116(c)(3) and (5) – (11) and the corresponding regulatory provisions, an SEA that is no longer implementing ESEA flexibility must resume identifying LEAs for improvement or corrective action. In doing so, the SEA must advance an LEA along the LEA improvement timeline under ESEA section 1116(c)(3) – (10) based on the LEA’s status in the most recent school year in which it was implementing all provisions of the ESEA and whether the LEA made AYP based on assessments administered in the final year that an SEA is approved to implement ESEA flexibility. For example, in order to determine the appropriate status for the 2015–2016 school year for an LEA in a State that implemented ESEA flexibility for the 2012–2013, 2013–2014, and 2014–2015 school years, an SEA would determine that LEA’s status for the 2011–2012 school year (*i.e.*, the most recent school year in which the LEA was implementing all provisions of the ESEA), and use that status as the baseline for advancing the LEA along the improvement timeline under ESEA section 1116(c)(3) – (10) based on whether the

LEA made AYP based on assessments administered in the 2014–2015 school year (*see* Question 1, row 7).

**8. How will an LEA identify its schools for improvement, corrective action, or restructuring in the first year its SEA resumes full compliance with the ESEA?**

Consistent with the requirements of ESEA section 1116(b) and the corresponding regulations, an LEA in an SEA that is no longer implementing ESEA flexibility must resume identifying schools for improvement, corrective action, or restructuring. In doing so, the LEA must advance a school along the school improvement timeline under ESEA section 1116(b)(2) – (8) based on the school’s status in the most recent school year in which it was implementing all provisions of the ESEA and whether the school made AYP based on assessments administered in the final year that an SEA is approved to implement ESEA flexibility. For example, in order to determine the appropriate school status for the 2015–2016 school year for a school in a State that implemented ESEA flexibility for the 2012–2013, 2013–2014, and 2014–2015 school years, an LEA would determine that school’s status for the 2011–2012 school year (*i.e.*, the most recent school year in which the school was implementing all provisions of the ESEA), and use that status as the baseline for advancing the school along the school improvement timeline in section 1116(b)(2) – (8) based on whether the school made AYP based on assessments administered in the 2014–2015 school year (*see* Question 1, row 6).

**9. If an SEA is no longer implementing ESEA flexibility, may it identify priority and focus schools as part of its statewide system of accountability and support under the ESEA?**

Yes. An SEA may maintain its current priority school and focus school designations under the ESEA for its statewide system of accountability and support. An SEA may also continue to designate new priority schools and focus schools for its statewide system of accountability and support in future years. However, an LEA and SEA must resume compliance with ESEA sections 1116(b) and (c), which require identification of schools and LEAs, respectively, for improvement, corrective action, or restructuring, as applicable, and the implementation of required improvement measures. Therefore, any priority school and focus school designations that an SEA continues to use or makes under the ESEA will be in addition to, rather than in lieu of, the required accountability designations under the ESEA. It is likely, however, that the interventions that a priority or focus school implemented under ESEA flexibility would satisfy many of the requirements for schools in improvement, corrective action, or restructuring under ESEA section 1116(b).

**10. If an SEA is no longer implementing ESEA flexibility, may the SEA use ESEA section 1003(a) funds to support any priority schools and focus schools it elects to continue to designate or newly designates under its statewide system of accountability and support?**

An SEA must allocate ESEA section 1003(a) funds only for use in Title I schools to support improvement, corrective action, or restructuring. Thus, an SEA may use ESEA section 1003(a) funds to support improvement, correction action, or restructuring at any Title I school that it designates or continues to designate as a priority or focus school under its statewide system of accountability and support. Additionally, an SEA may elect to allocate its ESEA section 1003(a) funds to support the smaller subset of its Title I schools in improvement, corrective action, or

restructuring that are designated as priority schools. However, an SEA may not use ESEA section 1003(a) funds to support any Title I priority schools or focus schools that are not designated as Title I schools in improvement, corrective action, or restructuring unless those funds are “unused” and distributed in accordance with ESEA section 1003(d).

**11. May a school that became eligible to operate a schoolwide program because it was designated a priority school or a focus school under ESEA flexibility, rather than because it met the eligibility requirements of ESEA section 1114(a)(1), continue to operate a schoolwide program in future school years?**

Yes. Consistent with 34 C.F.R. § 200.25(b)(1)(ii), any school that operated a schoolwide program in the most recent school year may continue to operate a schoolwide program. However, any school that seeks to operate a new schoolwide program (*i.e.*, a school that has not operated a schoolwide program in the most recent school year but seeks to operate a schoolwide program in the coming school year) must meet the 40 percent poverty threshold required by ESEA section 1114(a)(1) (*see* Question 1, row 4).

**12. If an SEA is no longer implementing ESEA flexibility, must an LEA that is receiving School Improvement Grant (SIG) funds to implement a SIG model in a school, including a school that may be designated as a priority school, continue to implement all required elements of its chosen SIG model?**

Yes. Consistent with ESEA section 1003(g) and the notice of final requirements for the SIG program (75 Fed. Reg. 66363 (Oct. 28, 2010), available at: <http://www2.ed.gov/programs/sif/2010-27313.pdf>), an LEA that is receiving SIG funds to implement a SIG model in a school must implement all requirements of the SIG model. For example, SIG schools implementing the transformation model are required to continue to implement teacher and principal evaluation systems consistent with the final requirements for the SIG program.

**13. If an SEA is no longer implementing ESEA flexibility, what must the SEA and its LEAs prepare to do in order to resume provision of supplemental educational services (SES) under the ESEA?**

Consistent with the requirements of ESEA section 1116(e), an SEA and its LEAs must resume the necessary actions to offer SES to eligible students in schools in improvement, corrective action, or restructuring.

For the SEA, these actions include, but are not limited to, actions necessary to

- Approve SES providers,
- Maintain a list of approved providers,
- Display certain information on its Web site,
- Monitor implementation of SES by its LEAs,
- Monitor the quality and effectiveness of SES providers.

For an LEA with schools in improvement, corrective action, or restructuring, these actions include, but are not limited to, the actions necessary to meet the requirements that the LEA provide annual

notice to parents of the availability of SES, the identity of approved providers of SES, and a brief description of the services, qualifications, and demonstrated effectiveness of each SES provider.

An SEA should take the steps necessary to resume the provision of SES so that an LEA may provide the required information to parents as early as possible in the school year, and begin offering SES in a timely manner thereafter (*see* Question 1, row 8). For additional guidance on providing SES, an SEA should review ED's January 14, 2009, *Supplemental Educational Services Non-Regulatory Guidance*, available at: [www.ed.gov/policy/elsec/guid/suppsvcsguid.doc](http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc). ED also encourages an SEA to consider the recommendations to minimize fraud and abuse of Title I funds in SES programs included in ED's March 10, 2014, *Dear Colleague Letter*, available at: [www2.ed.gov/policy/elsec/guid/stateletters/ses/sesoigltr03102014.pdf](http://www2.ed.gov/policy/elsec/guid/stateletters/ses/sesoigltr03102014.pdf).

**14. If an SEA is no longer implementing ESEA flexibility, what must the SEA and its LEAs prepare to do in order to resume provision of public school choice under the ESEA?**

Consistent with the requirements of ESEA section 1116(b) and its implementing regulations, an SEA and its LEAs must resume the necessary actions to offer public school choice to eligible students in schools in improvement, corrective action, or restructuring. These actions include, but are not limited to, actions necessary to meet the requirement that an LEA provide, not fewer than 14 days prior to the first day of the school year, all students enrolled in a school in its first or second year of improvement, corrective action, or restructuring with notice of the public school choice option. The public school choice requirements that must be met by an LEA resuming full compliance with the ESEA also include, but are not limited to, the requirement that the LEA provide transportation for eligible students electing to participate in public school choice. An SEA may wish to review ED's January 14, 2009, *Public School Choice Non-Regulatory Guidance*, available at: [www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc](http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc).

**15. If an SEA is no longer implementing ESEA flexibility, what amount of funds must an LEA spend to provide SES and transportation for public school choice to eligible students under the ESEA?**

An LEA must spend an amount of funds equal to 20 percent of its Title I allocation to provide SES and transportation for public school choice to eligible students, unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for SES (*see* Question 1, row 6). For more information on circumstances in which a lesser amount is needed, see K-13 and Section L in ED's SES guidance (use link in Question 13). Note that, in addition to paying for choice-related transportation and SES, 34 C.F.R. § 200.48(a)(2)(iii)(C) allows an LEA to spend up to one percent of its 20 percent obligation on parent outreach and assistance.

**16. If an SEA is no longer implementing ESEA flexibility, is it required to resume making accountability determinations in accordance with its Accountability Workbook that was approved prior to the SEA's receiving ESEA flexibility and that was superseded by its ESEA flexibility Accountability Addendum?**

Yes. However, an SEA may request to amend its Accountability Workbook to incorporate changes from its Accountability Addendum, to the extent such changes are consistent with the requirements of the ESEA. For example, if an SEA raised its graduation rate goal under ESEA flexibility, ED

encourages it to consider amending its Accountability Workbook to reflect the new graduation rate goal. Similarly, if an SEA lowered the minimum number of students necessary to yield statistically reliable information (its minimum n-size) under ESEA flexibility, ED encourages the SEA to consider amending its Accountability Workbook to incorporate the smaller n-size.

**17. If an SEA is no longer implementing ESEA flexibility, must it continue to address any outstanding “next steps” in ESEA flexibility monitoring reports?**

Yes, an SEA must address “next steps” in an ESEA flexibility monitoring report if those next steps reflect noncompliance with underlying requirements of the ESEA that were not waived by the SEA’s receipt of ESEA flexibility. Next steps that relate only to compliance with ESEA flexibility requirements would not need to be addressed if an SEA is no longer implementing ESEA flexibility. For example, a monitoring next step regarding implementation of all turnaround principles in priority schools would not need to be addressed by an SEA that is no longer implementing ESEA flexibility. Alternatively, a next step regarding an SEA’s publication of its report card in accordance with ESEA section 1111(h)(1) would need to be addressed.

**18. If an SEA and its LEAs are no longer implementing ESEA flexibility, how do their report card requirements change?**

An SEA and its LEAs must continue to comply with all reporting requirements in ESEA section 1111(h)(1)(C) and (h)(2)(B), including the requirement that each SEA and LEA that receives Title I funds prepare and disseminate an annual report card. Generally, an SEA or LEA must include on its report card information about student achievement, accountability, and teacher quality at public schools, as well as any other information that the SEA or LEA deems relevant. For additional guidance on State and local reporting requirements, an SEA may wish to review ED’s February 8, 2013, *State and Local Report Cards Under Title I, Part A, Non-Regulatory Guidance*, available at: [www2.ed.gov/programs/titleiparta/state\\_local\\_report\\_card\\_guidance\\_2-08-2013.pdf](http://www2.ed.gov/programs/titleiparta/state_local_report_card_guidance_2-08-2013.pdf).

**19. If an SEA and its LEAs are no longer implementing ESEA flexibility, what must an SEA consider regarding other data it reports to ED?**

Under the ESEA, an SEA must continue to report required data to ED. In doing so, an SEA should continue to carefully review the instructions that ED provides to SEAs to support accurate and high-quality data reporting. An SEA that is no longer implementing ESEA flexibility should contact the ED*Facts* Partner Support Center (PSC) directly with any specific questions regarding its ESEA data reporting. Contact information for PSC is available at: [www2.ed.gov/about/inits/ed/edfacts/eden/contacts.html](http://www2.ed.gov/about/inits/ed/edfacts/eden/contacts.html).