



**REPORT TO CONGRESS
ON ACTIVITIES CARRIED OUT BY STATES
DURING SCHOOL YEAR 2007-08
UNDER THE EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999**

INTRODUCTION

Under the Education Flexibility Partnership Act of 1999, the Secretary of Education is authorized to delegate to States with strong accountability safeguards the authority to waive certain requirements of Federal education programs that may, in particular instances, impede local efforts to reform and improve education. “Ed-Flex” authority is designed to help local educational agencies (LEAs) and schools carry out educational reforms and raise the achievement levels of all children by providing increased flexibility in the implementation of Federal education programs in exchange for enhanced accountability for the performance of students.

To be eligible for Ed-Flex authority, a State must have: (1) approved academic standards and an aligned assessment system as required under Part A of Title I of the Elementary and Secondary Education Act of 1965 (ESEA); (2) an approved accountability system under Part A of Title I; and (3) the authority to waive State education requirements.

Under section 4(a)(5)(C) of the Ed-Flex statute, the Secretary of Education transmits to Congress an annual report that summarizes the reports States submitted under the Ed-Flex program and describes its effects on the implementation of State and local educational reforms and on the performance of students affected by the waivers. In this annual report to Congress, the U.S. Department of Education (Department) is reporting on State-reported data for school year (SY) 2007-08.

There are ten Ed-Flex States: Colorado, Delaware, Kansas, Maryland, Massachusetts, North Carolina, Pennsylvania, Oregon, Texas, and Vermont. By statute, the waiver authority of these Ed-Flex States extends until the reauthorization of Part A of Title I of the ESEA. The Department no longer has the authority to grant Ed-Flex status to additional States.

The report summarizes data reported by each of the Ed-Flex States. Kansas, Maryland and Oregon had no waiver activity during SY 2007-08 and had no data to report. In addition to data on the numbers and types of waivers granted, this report includes information about the monitoring activities of State educational agencies (SEAs), the technical assistance offered to LEAs receiving waivers, and the general effects of those waivers on reform efforts and student achievement.

SCOPE OF THE ED-FLEX AUTHORITY

Ed-Flex allows participating SEAs to waive statutory and regulatory provisions governing the major elementary and secondary education formula grant programs authorized under the ESEA. In addition, the SEAs may waive provisions governing the Carl D. Perkins Career and Technical Education Act of 2006. Specifically, SEAs may waive certain provisions governing the following State-administered formula grant programs:

- Title I, Part A of the ESEA (Improving the Academic Achievement of Disadvantaged Children)
- Title I, Part B, Subpart 3 of the ESEA (Even Start Family Literacy Programs)
- Title I, Part C of the ESEA (Education of Migratory Children)
- Title I, Part D of the ESEA (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk)
- Title I, Part F of the ESEA (Comprehensive School Reform)
- Title II, Part A, Subparts 2 and 3 of the ESEA (Teacher and Principal Training and Recruiting)
- Title II, Part D, Subpart 1 of the ESEA (Enhancing Education through Technology)
- Title III, Part B, Subpart 4 of the ESEA (Emergency Immigrant Education)¹
- Title IV, Part A, Subpart 1 of the ESEA (Safe and Drug-Free Schools and Communities)
- Title V, Part A of the ESEA (Innovative Programs)
- The Carl D. Perkins Career and Technical Education Act (Career and Technical Education to the States; Tech Prep)

However, an SEA may not waive requirements of Part A of Title I of the ESEA related to State plans, standards, assessments, and accountability (section 1111 of the ESEA) or school improvement (section 1116 of the ESEA). The statute also specifically prohibits States from waiving requirements related to, among other things: (1) maintenance of effort; (2) comparability of services; (3) equitable participation of students and professional staff in private schools; (4) parental participation and involvement; (5) distribution of funds to States or local educational agencies; (6) use of Federal funds to supplement, not supplant, non-Federal funds; and (7) civil rights.

OVERVIEW OF WAIVER ACTIVITY ACROSS STATES

During SY 2007-08, a total of 184 waivers were in effect across seven of the Ed-Flex States – 78 were new waivers, 40 were ongoing waivers, and 66 were extensions of previous waivers.² Delaware, North Carolina and Vermont did not issue any new waivers, but reported information for ongoing or extension waivers. The majority of waivers in effect during SY 2007-08 were for requirements of Title I, Part A.

¹ The Emergency Immigrant Education Program was not funded during the period covered by this report.

² For purposes of this report, a *new waiver* is a waiver that an SEA granted for the first time during SY 2007-08. An *ongoing waiver* is a multi-year waiver that an SEA granted before SY 2007-08 and that remains in effect during SY 2007-08 without any additional action by the SEA. An *extension waiver* is a waiver that an SEA previously granted and specifically extended during SY 2007-08 beyond the original expiration date.

Most States used the Ed-Flex authority to waive provisions of Title I of the ESEA that they felt impeded local reform efforts. Most States issued waivers of the minimum poverty threshold required to operate a schoolwide reform program: Colorado, Delaware, Massachusetts, Pennsylvania, Texas and Vermont waived the Title I schoolwide poverty threshold in section 1114(a)(1) of the ESEA, which generally requires that schools have greater than a 40 percent student poverty rate before they may consolidate funds to enact schoolwide reform programs. The States waived these within-LEA allocation requirements so that schools in attendance areas with lower rates of poverty but a greater need for services could receive Title I services to improve student achievement. Each school that was made eligible for Title I, Part A services under such a waiver had a poverty rate that was within 10 percent of the lowest poverty percentage for all schools within the LEA. States frequently also waived provisions related to the within-LEA allocation of Title I, Part A funds. Colorado, Pennsylvania and Texas each targeted provisions of section 1113 of the ESEA. Pennsylvania, for instance, issued 28 waivers of section 1113(a)(2)(B), which generally prohibits individual schools from receiving Title I funds when they have a poverty rate lower than that of the LEA as a whole; the waiver allowed schools to receive funds that would otherwise have been ineligible and the State reported that as a result, more children received educational support services, more teachers participated in professional development activities, and more children had access to educational technology. Another within-LEA allocation provision that Pennsylvania waived was section 1116(b)(10)(D). That section generally requires an LEA to award Title I funds to its individual schools in rank order on the basis of poverty with no more than a 15 percent reduction to schools in corrective action; the waiver, coupled with a waiver of the rank order poverty requirement in section 1113(c)(1), allowed one large LEA to tailor its Title I allocation of funds on the basis of need.

Other provisions that States waived included the limits on Title I, Part A carryover funds in ESEA section 1127. Texas issued four new waivers of section 1127(b) and Pennsylvania had one ongoing waiver of section 1127 as a whole. The waivers allowed four LEAs in Texas to carry over into the next fiscal year up to 15 percent of their funds more often than the typical period of once every three years permitted in section 1127(b). Conversely, the waiver of section 1127 in Pennsylvania allowed its LEA to waive section 1127(a) and to carry over more than 15 percent of its funds.

Finally, North Carolina used Ed-Flex authority to waive the Tydings Amendment for funds the State's LEAs received under Title I, Part F and Title II, Part D. The Tydings Amendment generally requires the Department to enforce regulations that grantees must obligate their funds within 27 months and draw down those obligated funds within 90 days thereafter. As a result of the waivers, LEAs had extended time in which to use their funds. The State reported that its LEAs were able to provide additional coaching and modeling so that teaching practices relating to curriculum, instruction, and assessment could be better implemented in the classroom, to provide more coordinators and facilitators for the programs and to better plan the uses of funds while implementing the reform strategies, and to provide technical assistance to support LEAs in developing school and LEA programs to promote student achievement through the use of technology.

States reported on the overall usefulness of having the flexibility to waive certain Federal requirements. Many States indicated that LEAs were able to customize services based on schools' needs as a result of receiving Ed-Flex waivers. A few States indicated their intent to revise their LEA Ed-Flex applications or make modifications to the waiver review process, or both. States also expressed a desire to continue their Ed-Flex waiver authority.

STATE-BY-STATE ED-FLEX WAIVER ACTIVITIES

This section profiles the waiver activity for each of the seven States that reported on Ed-Flex waiver activity for SY 2007-08. Copies of individual State Ed-Flex reports are available from the Department. A chart indicating the number and types of waivers granted by States during the reporting period is attached on the last page of the report. The information that follows is taken directly from State reports.

COLORADO

Active Waivers

Colorado granted two new Title I schoolwide waivers under section 1114(a)(1) of the ESEA. The two schools receiving waivers were permitted to operate a Title I schoolwide program even though the schools' poverty rates were below 40 percent, the minimum poverty rate established by the ESEA. Each school was required to develop a plan for how the flexibility would impact student achievement for all students. The State reported that the schools' plans included measurable objectives that would be reviewed annually.

Colorado granted one new waiver of section 1113(c) of the ESEA. This waiver allowed the LEA to fund schools out of rank order and enabled the LEA to serve schools determined by the LEA to have a higher need, but lower poverty percentage.

Colorado approved two extensions of waivers of section 1114(a)(1) of the ESEA to schools wishing to operate Title I schoolwide reform programs. There were also three ongoing waivers of the same requirement. Each school's poverty rate is below 40 percent. The State reported that appropriate Title I schoolwide plans reflect annual measurable objectives for all students in the two schools. Specifically, students who are most at risk receive additional intervention, and other students are provided instruction through a Response to Intervention model. The State reported the continued achievement of adequate yearly progress (AYP) targets.

The State also reported that it expects, as a result of these waivers, increased achievement of all students in affected schools and improvements for subgroups not currently making AYP.

New Waivers

- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to two LEAs, affecting two schools.
- Title I within-district allocation waivers (ESEA section 1113(c)(1)): granted to one LEA, affecting one school.

Extension Waivers

- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to two LEAs, affecting two schools.

Ongoing Waivers

- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to three LEAs, affecting three schools.

Monitoring and Technical Assistance

The SEA conducts annual reviews to determine if LEAs and schools are meeting annual Ed-Flex goals. During SY 2006-07, the SEA began improved oversight and reviews of schoolwide waivers to ensure that school-level activities continue to be consistent with schoolwide plans and ensure that the plans and activities continue to focus on all students.

SEA staff reviewed the academic achievement of students in schools affected by schoolwide eligibility waivers to determine whether the schools were making their AYP targets. The State reported that the level of technical assistance it provided LEAs was proportionate to their needs. The State reported that it annually requests a performance report from each school and LEA to which it has granted an Ed-Flex waiver. If annual, measurable objectives (AMOs) are met, then the SEA does not intervene or request additional information; when AMOs are not met, the SEA requests additional data from the school or LEA, and an explanation of the reasons that the school or LEA did not meet its AMOs, and a plan to meet the AMOs in the next year. One school failed to meet its AMO in SY 2006-07. As a result, the SEA staff held a meeting with the LEA and school to determine what revisions to the plan were necessary in order for the school to make its targets in SY 2007-08. The school met its AMOs in SY 2007-08. The State has found that schools generally continue to meet their AMOs and the SEA did not terminate any waivers during SY 2007-08.

In order to educate LEAs about Ed-Flex authority, the SEA hosts workshops and posts information in its Federal programs newsletter found on the SEA website. In addition, the Title I State Committee of Practitioners is trained to inform LEAs about Ed-Flex opportunities, requirements, and the application process.

DELAWARE

Active Waivers

Delaware did not grant any new or extension waivers for SY 2007-08. There were six ongoing waivers of section 1114(a)(1) of the ESEA.

The SEA uses the Ed-Flex authority to enable schools that receive limited funding to implement schoolwide programs where the poverty percentage is less than 40 percent. The SEA reports that all schools with ongoing waivers are meeting measurable goals and targets.

New Waivers

- None

Extension Waivers

- None

Ongoing Waivers

- Title I schoolwide eligibility waiver (ESEA section 1114(a)(1)): granted to six LEAs, affecting 12 schools.

Monitoring and Technical Assistance

The SEA accepts Ed-Flex waiver applications twice a year, and LEAs are notified in writing at least a month before the application period begins. An Ed-Flex manager coordinates the application process and offers technical assistance to LEAs. The State also provides information and assistance during statewide meetings in an effort to advise LEAs of this flexibility.

The SEA conducts an annual “Quality Review of Educational Programs,” which analyzes the impact of an LEA’s education program strategies. The LEAs receive feedback on the implementation of waivers during this review. Additionally, the Ed-Flex manager schedules on-site visits to each LEA in order to meet with administrators and witness the impact of the waiver. The LEA receives additional feedback after the site visit.

MASSACHUSETTS

Active Waivers

Massachusetts granted 33 new waivers in SY 2007-08. Twenty-nine of the new waivers were of the Title I, Part A professional development set-aside requirement for schools and LEAs identified for improvement. The SEA also granted four new waivers to LEAs in improvement status to allow the LEAs to continue to serve as supplemental educational service providers under section 1116(e) of the ESEA. The Department has notified the State that it should not issue either of these waivers in the future because the State lacks the authority to waive these provisions under the Ed-Flex authority.

The State reported 22 extensions of waivers; all were of the Title I, Part A professional development set-aside requirement. The State reported two ongoing waivers of the section 1114(a)(1) of the ESEA to schools wishing to operate Title I schoolwide programs.

The professional development set-aside waivers had broad impact; however, the SEA was unable to indicate the precise number of schools affected by these waivers. In order to receive a waiver of this section, the LEA had to provide documentation showing that sufficient funding for professional development was available from other sources. For example, several schools with low performance in reading received Reading First grant funds that could be used for professional development in amounts that exceeded the required Title I, Part A set-aside. The LEA documented how teachers would receive high-quality professional development in reading from the existing resources and illustrated how Title I funds could be of greater benefit if used for direct instructional services to students.

New Waivers

- Title I district in improvement status as supplemental education service provider (ESEA section 1116(e)): district-wide waiver granted to four LEAs.³
- Title I professional development set-aside waivers (ESEA sections 1116(b)(3)(A)(iii) and 1116(c)(7)(A)(iii)): district-wide waiver granted to 29 LEAs.⁴

Extension Waivers

- Title I professional development set-aside waivers (ESEA sections 1116(b)(3)(A)(iii) and 1116(c)(7)(A)(iii)): district-wide waiver granted to 22 LEAs.⁵

³ In the Fall of 2008, the Department informed the State that this type of waiver was beyond the scope of the State's Ed-Flex authority and advised the State that it may no longer issue such waivers.

⁴ The Department initially had erroneously informed Massachusetts that these waivers could be granted under the State's Ed-Flex authority. In October of 2008, after receiving the State's 2006-07 Ed-Flex report, the Department corrected its initial statement and informed Massachusetts that future waivers of this type had to be sought under the Department's general waiver authority in section 9401 of the ESEA because the State's Ed-Flex authority does not extend to requirements under section 1116.

⁵ The State previously reported these waivers as section 1119(l) waivers. These waivers were actually waivers of the ten percent professional development set-aside requirement in sections 1116(b)(3)(A)(iii) and 1116(c)(7)(A)(iii) of the ESEA for LEAs and schools in need of improvement.

Ongoing Waivers

- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to two LEAs, affecting three schools.

Monitoring and Technical Assistance

The SEA gives assistance and constructive feedback to LEAs receiving waivers as necessary to ensure the expected outcomes as detailed in the waiver request are achieved. During LEA on-site monitoring visits, schools receiving waivers are visited and a staff member meets with administrators and teachers to determine if the waiver has been instrumental in improving student achievement and provides technical assistance to local staff as needed.

NORTH CAROLINA

Active Waivers

North Carolina did not grant any new waivers in SY 2007-08.

There were 16 extensions of waivers of the Tydings Amendment regarding fund availability. The Tydings Amendment requires that the Department regulate its grantees' obligation and drawdown of funds, limiting them to a 27 month window in which to obligate funds, and an additional 90 days in which to draw down funds. The State issued Tydings Amendment waivers for subgrants awarded under Title I, Part F of the ESEA (Comprehensive School Reform (CSR)) to 12 LEAs, affecting 22 schools, and waivers for subgrants awarded under Title II, Part D, Subpart 1 of the ESEA (Enhancing Education Through Technology (EETT)) to four LEAs, affecting another 22 schools.

As a result of the waivers of the Tydings period for CSR funds, LEAs had a longer period in which to obligate and draw down their funds. The LEAs were able to provide additional coaching and modeling so that practices relating to curriculum, instruction, and assessment could be better implemented in the classroom. The waivers allowed schools to provide more coordinators and facilitators for the programs and to better plan the uses for the funds while implementing the reform strategies designated under the LEA three-year development plan. The waiver of the Tydings period for EETT funds allowed LEAs an additional year to fund programs aimed at providing technical assistance to support LEAs in developing school and LEA programs to promote high student achievement through the use of technology and media tools that supported the overall curriculum.

New Waivers

- None

Extension Waivers

- Tydings Amendment waivers applicable to Title II, Part D, Subpart 1 (EETT) funds: granted to four LEAs, affecting 22 schools.
- Tydings Amendment waivers applicable to Title I, Part F (CSR) funds: granted to 12 LEAs, affecting 22 schools

Ongoing Waivers

- None

Monitoring and Technical Assistance

The SEA implemented comprehensive monitoring for all Federal programs beginning in SY 2006-07. According to the SEA, the Tydings waivers applicable to EETT funds were again closely monitored through a rigorous site visit schedule in SY 2007-08. The LEAs received monthly on-site visits from consultants working with the SEA Division of Instructional Technology. The site visit reports were submitted to the Director for Instructional Technology

for review and follow-up. The SEA posted progress for each LEA receiving the waiver on the SEA website.

Each LEA receiving a waiver of the Tydings period for CSR funds also received an on-site visit from SEA staff. The SEA published the monitoring instrument on the SEA website and used the website to track the progress of LEAs receiving the waiver. After each on-site visit, the SEA coordinator for CSR met with the principal and other school representatives to discuss the progress of the school's reform efforts.

PENNSYLVANIA

Active Waivers

Pennsylvania granted 32 new waivers for SY 2007-08. There were also five ongoing waivers. Several LEAs and schools received multiple waivers.

The SEA reported multiple positive results from the waivers of the Title I school eligibility requirements in section 1113(a)(2)(B) of the ESEA. The State reported that its 28 waivers of this section allowed more children to receive educational support services and additional teachers to participate in professional development activities. The waivers also increased supplemental educational materials and supplies for students and teachers and student access to technology. Another within-LEA allocation provision that Pennsylvania waived was section 1116(b)(10)(D). That section generally provides that an LEA must award its Title I funds to individual schools in rank order based on their poverty; the LEA may not reduce the allocation to a school that is in corrective action by more than 15 percent. The waiver of section 1116(b)(10)(D), coupled with a waiver of the rank order poverty requirement in section 1113(c)(1), allowed Philadelphia City Schools to tailor its Title I allocation of funds on the basis of need.

Finally, the waiver of section 1127 of the ESEA allowed one LEA to carry over more than 15 percent of its Title I funds for parental involvement activities for the Pennsylvania State Parent Advisory Council. The State reported that the result was increased funding for programs that brought parents into the school as participants in the school community.

New Waivers

- Title I eligible school attendance area waiver (ESEA section 1113(a)(2)(B)): granted to 26 LEAs, affecting at least 28 schools.⁶
- Title I within-district allocation waiver (ESEA section 1113(c)(1)): granted to four LEAs, affecting five schools.
- Title I per-pupil allocation waiver (ESEA section 1113(c)(2)): granted to one LEA, affecting two schools.
- Title I schoolwide eligibility waiver (ESEA section 1114(a)(1)): granted to one LEA, affecting one school.

Extension Waivers

- None

Ongoing Waivers

- Title I, Part A carryover limitation waivers (ESEA section 1127): granted to one LEA, affecting one school.
- Title I eligible school attendance area waiver (ESEA section 1113(a)(2)(B)): granted to two LEAs, affecting two schools.⁷

⁶ The State was unable to provide the total number of schools affected in the following LEAs: Berwick, Dallastown, Kutztown, and Lehigh.

⁷ Eastern Lancaster had one three-year waiver already in effect for Caernarvon School since SY 2005-06. The same LEA requested a new waiver for Brecknock Elementary School in SY 2007-08.

- Prohibition on reduction of funds for schools in corrective action (ESEA section 1116(b)(10)(D)): granted to one LEA, affecting all 265 of its schools.⁸
- Title I within-district allocation waiver (ESEA section 1113(c)(1)): granted to one LEA, affecting all 265 of its schools.

Monitoring and Technical Assistance

The SEA's Division of Federal Programs monitors waivers using a consolidated review instrument. Additionally, the SEA monitors LEAs receiving approved waivers through on-site visits to help ensure that LEAs are meeting the goals established in their waiver applications. If an LEA's performance has been inadequate to justify continuation, or if the LEA's performance has declined for two consecutive years (absent exceptional or uncontrollable circumstances), the waiver is revoked. LEAs are evaluated during periodic monitoring visits to determine whether the waiver authority and waivers (as the case may be) are working. At an annual orientation training, the monitors in the Division of Federal Programs receive an update on the Ed-Flex waiver process. Regional Coordinators and Federal Program Monitors are encouraged to consult with the Ed-Flex Waiver Project Manager prior to conducting assistance visits and monitoring visits. The specific reason(s) for waivers are discussed in advance of visits and these areas are then scrutinized during visits.

In addition to offering one-on-one technical assistance to LEAs applying for and receiving waivers, the State provides technical assistance workshops and conferences to address issues relating to the Ed-Flex program.

⁸ In the Fall of 2008, the Department informed the State that this type of waiver was beyond the scope of the State's Ed-Flex authority and advised the State that it may no longer issue such waivers. Pennsylvania did not issue new waivers of this type during SY 2007-08.

TEXAS

Active Waivers

Texas granted 10 new waivers in SY 2007-08, affecting 95 schools. There were 46 ongoing waivers in effect, affecting 101 schools. In total, the State had 56 active waivers for SY 2007-08 affecting 196 schools.⁹

The State report highlighted the 10 new and 46 ongoing schoolwide waivers. According to the State report, the flexibility afforded with operating a schoolwide program, in lieu of a targeted assistance program, allowed campus administrators to integrate the entire education program on their campus. The State reported success with this waiver as evidenced by the fact that all but one of the schoolwide waiver campuses made AYP.

New Waivers

- Title I within-district allocation waiver (ESEA section 1113(c)(1)): granted to one LEA, affecting 66 schools.
- Title I, Part A carryover limitation waivers (ESEA section 1127(b)): granted to four LEAs, affecting 17 schools.
- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to five LEAs, affecting 12 schools.

Extension Waivers

- None

Ongoing Waivers

- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to 44 LEAs, affecting 87 schools.
- Title I within-district allocation waiver (ESEA section 1113(c)(1)): granted to two LEAs, affecting 14 schools.

⁹ Texas also granted the following statewide administrative waivers to LEAs for the duration of Texas' waiver authority:

- Submission of a Request for Specific Approval of Certain Items (34 CFR §§ 74.25(c)(6), 74.27, 80.22, 80.33(b), as applicable: this waiver eliminates the need for LEAs to request specific approval for items budgeted in certain class/object codes;
- Submission of an Amendment to Transfer Funds for Training Costs (34 CFR §§ 74.25(c)(7), 80.30(c)(1)(iii)), as applicable: this waiver eliminates the need for LEAs to obtain an amendment to transfer funds budgeted for training costs that are direct payments to trainees as long as the program description in the application remains unchanged;
- Certification that an Employee Is Funded from a Single Fund Source or Cost Objective (OMB Circular A-87, Attachment B, Number 11(h)(3)): this waiver eliminates the requirement that the employee provide biannual certifications that he or she worked 100 percent on a program or cost objective as long as the employee's job description clearly reflected this.

Monitoring and Technical Assistance

An LEA may request a waiver of a Federal program provision by showing that the provision presents barriers to school improvement strategies contained in the LEA or school annual improvement plans. Each waiver request must specify which objectives in the improvement plan the waiver will address, how the waiver will be used to meet the objectives, and measurable performance targets the school or LEA will meet to mark progress toward the reform objectives and the State's academic goals. The application also must identify a technical assistance provider that will be used if the required annual gains in the student performance are not met.

Texas has implemented a monitoring and intervention system called the Performance-Based Monitoring Analysis System (PBMAS) which places a strong emphasis on data integrity, a focus on a coordinated approach to agency monitoring, and an application of sanctions and interventions. All LEAs are monitored annually by this system, not just those that receive waivers. A variety of strategies that include self-evaluation, desktop monitoring, and on-site monitoring are used by the PBMAS to identify areas in need of improvement or correction for a given program. Intervention and sanctions are implemented based on the result of monitoring activities to address findings related to performance concerns and noncompliance with Federal and State requirements. The extent and duration of performance concerns are considered in the determination of interventions and sanctions.

If an LEA does not meet evaluation or performance requirements established in the waiver application by the end of the first year, the technical assistance provider designated in the waiver application must provide technical assistance to address performance concerns. If the LEA fails to meet annual performance targets for two consecutive years, the State notifies the LEA the waiver will be terminated at the end of the third year. At the end of the third year, if the LEA cannot document that it has met its targets, an application to renew the waiver will be denied.

Texas also reported that SEA staff review student performance results on the Texas Assessment of Knowledge and Skills (TAKS) annually to determine progress made towards performance goals and targets in the waiver applications. In order for LEAs to maintain Ed-Flex waivers, waiver schools must maintain or progress to 90 percent passing levels on TAKS and meet other evaluation requirements specified in the waiver.

VERMONT

Active Waivers

Vermont granted no new waivers or extensions during SY 2007-08. The State maintained four ongoing waivers enabling the State's small Title I schools to implement schoolwide programs, even in cases where the percentage of children from low-income families is less than the statutory 40 percent, as a way of encouraging the development of school improvement strategies in a coordinated, cohesive manner. There are four ongoing waivers of the 40 percent minimum poverty requirement for schoolwide programs in section 1114(a)(1) of the ESEA.

New Waivers

- None

Extension Waivers

- None

Ongoing waivers

- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to four LEAs, affecting nine schools.

Monitoring and Technical Assistance

All Vermont LEAs are monitored by two Consolidated Federal Program monitoring teams and one Federal Fiscal Monitoring Team on a five year rotation. These schedules are designed so that they typically do not overlap and therefore most LEAs are visited at least twice in a five year period. The schoolwide program area is an integral part of these monitoring processes. LEAs receiving waivers are monitored within this process. In addition, oversight of waivers and technical assistance sessions occur during the annual application review process.

CONCLUSION

Ed-Flex continues to be a factor in planning for flexible use of funds and helping LEAs and schools carry out educational reforms to raise the achievement levels of students. States expressed a clear desire to continue the Ed-Flex waiver authority and consider new opportunities for its use. States reported that they use their Ed-Flex authority as an important strategy to remove statutory and regulatory barriers that impede local reform efforts and provide flexibility to develop innovative strategies to improve student achievement. Many States indicated that LEAs were able to customize services based on schools' needs as a result of receiving Ed-Flex waivers.

States consistently report that Ed-Flex waivers have been useful and that LEAs and schools affected by Ed-Flex waivers are meeting educational goals established in the waiver applications. States, however, report that the effects that the waivers have had on student achievement are seldom clear; the States have difficulty drawing direct conclusions that attribute student achievement outcomes to any one factor in the complex, multi-faceted educational structure. States find it especially difficult to make the direct connection between waiver activity and attainment of AYP because some waivers are not likely to have a direct impact on AYP or student achievement data. Despite the inability to draw this link, the States expressed a strong desire to continue or expand the Ed-Flex authority and provided specific examples of the successes achieved by using the program, for example:

Texas reported positive results from the use of Ed-Flex waivers under section 1113(c)(1) of the ESEA. According to the State, these waivers provided LEAs with critical flexibility to allocate funds out of rank order of poverty, enabling officials to make staffing decisions based on educational need rather than low income. Vermont reported that Ed-Flex waivers have assisted in reform by allowing local flexibility as an invaluable tool for budget management. Vermont also reported that by using Ed-Flex waivers it can encourage LEAs to maximize dollars and leverage available funds.

States reported integrated monitoring of all Federal programs, including Ed-Flex waivers. This type of comprehensive review may allow administrators to assess how the waivers have contributed to improved school achievement within larger school improvement strategies and the Department will continue to encourage this type of comprehensive monitoring for all Ed-Flex waivers. Some States have used information collected through monitoring as the subject matter for statewide technical assistance programs in an attempt to educate additional LEAs about the Ed-Flex authority.

Two States, Massachusetts and Pennsylvania, reported granting waivers that are not authorized under Ed-Flex authority.¹⁰ The Department has provided direct technical assistance to those States concerning the specific unauthorized waivers they granted, and has also refocused its overall monitoring and technical assistance activities to put greater emphasis on allowable uses of the Ed-Flex waiver authority. The Department has strengthened its Ed-Flex virtual and desk

¹⁰ The Department addressed these waivers with the States in the fall of 2008, however due to the reporting timeline the waivers are included in both the 2006-07 and 2007-08 Reports to Congress.

monitoring procedures to ensure that States understand fully the scope and limitations of the Ed-Flex waiver authority.

Active Ed-Flex Waivers During SY 2007-08

| State | Requirement Waived | New Waivers | Extension Waivers | Ongoing Waivers | Total Schools Affected |
|-----------------------|--|-------------|-------------------|-----------------|------------------------|
| Colorado | Title I within-district allocations (Section 1113(c)(1)) | 1 | 0 | 0 | 1 |
| | Title I schoolwide threshold (Section 1114(a)(1)) | 2 | 2 | 3 | 7 |
| Delaware | Title I schoolwide threshold (Section 1114(a)(1)) | 0 | 0 | 6 | 12 |
| Massachusetts | District- SES Provider (Section 1116(e)) | 4 | 0 | 0 | Not Applicable |
| | Professional development set-aside (Section 1116(b)(3)(A)(iii) and Section 1116(c)(7)(A)(iii)) | 29 | 22 | 0 | Not Applicable |
| | Title I schoolwide threshold (Section 1114(a)(1)) | 0 | 0 | 2 | 3 |
| North Carolina | Tydings Amendment for Title II, Part D, subsection 1 | 0 | 4 | 0 | 22 |
| | Tydings Amendment for Title I, Part F | 0 | 12 | 0 | 22 |
| Pennsylvania | Title I school eligibility (Section 1113(a)(2)(B)) | 26 | 0 | 2 | 30 ¹¹ |
| | Title I within-district allocations (Section 1113(c)(1)) | 4 | 0 | 1 | 270 |
| | Title I per-pupil allocation (Section 1113(c)(2)) | 1 | 0 | 0 | 2 |
| | Prohibition on reduction of funds for schools in corrective action (Section 1116(b)(10)(D)) | 0 | 0 | 1 | 265 |
| | Title I carry over funds (Section 1127) | 0 | 0 | 1 | 1 |
| | Title I school-wide threshold (Section 1114(a)(1)) | 1 | 0 | 0 | 1 |
| Texas | Title I carry over funds (Section 1127(b)) | 4 | 0 | 0 | 17 |
| | Title I within-district allocations (Section 1113(c)(1)) | 1 | 0 | 2 | 80 |
| | Title I schoolwide threshold (Section 1114(a)(1)) | 5 | 0 | 44 | 99 |
| Vermont | Title I schoolwide threshold (Section 1114(a)(1)) | 0 | 0 | 4 | 9 |
| TOTAL | | 78 | 40 | 66 | |

¹¹ Data not available for Berwick, Dallastown, Kutztown, and Lehigh.