



**REPORT TO CONGRESS
ON ACTIVITIES CARRIED OUT BY STATES
DURING SCHOOL YEAR 2008-09
UNDER THE EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999**

INTRODUCTION

Under the Education Flexibility Partnership Act of 1999 (Ed-Flex statute), the Secretary of Education delegated 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. This “Ed-Flex” authority is designed to help local educational agencies (LEAs) and schools to 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 report that it received from each Ed-Flex State, and describes the effects of Ed-Flex on the implementation of State and local educational reforms and on the performance of students affected by the waivers. This annual report to Congress contains State-reported data for school year (SY) 2008-09.

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.

This report summarizes data reported by each of the Ed-Flex States. 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. Kansas, Maryland and Oregon had no waiver activity during SY 2008-09 and are not included in the section of this report detailing individual State waiver activities.

SCOPE OF THE ED-FLEX AUTHORITY

Ed-Flex allows participating SEAs to waive statutory and regulatory provisions governing many of the major 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. More specifically, SEAs may waive certain provisions governing the following State-administered Federal formula grant programs¹:

- 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)
- 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)

An SEA may not, however, 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).² Section 4(c) of the Ed-Flex 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 LEAs; (6) use of Federal funds to supplement, not supplant, non-Federal funds; and (7) civil rights.

OVERVIEW OF WAIVER ACTIVITY ACROSS STATES

During SY 2008-09, a total of 131 waivers were in effect across the seven active Ed-Flex States: 62 were new waivers and 69 were ongoing waivers.³ There were no extensions of previously granted waivers in effect in any State. Of the seven States active in Ed-Flex during the reporting

¹ The Emergency Immigrant Education program, the Comprehensive School Reform program, and Innovative Programs were not funded during the period covered by this report.

² See section 1073 of the No Child Left Behind Act of 2001.

³ For purposes of this report, a *new waiver* is a waiver that an SEA granted for the first time during SY 2008-09. An *ongoing waiver* is a waiver that an SEA granted prior to SY 2008-09 and that remained in effect during SY 2008-09 without any additional action by the SEA. An *extension waiver* is a waiver that an SEA previously granted and extended during SY 2008-09 beyond the original expiration date.

period, Colorado was the only State that did not issue any new waivers. All but five waivers in effect during SY 2008-09 were waivers of the requirements of Title I, Part A.

All active States used Ed-Flex authority to waive provisions of Title I of the ESEA that they believed impeded local reform efforts. The most commonly waived requirement was ESEA section 1114(a)(1), which generally requires that schools have greater than a 40 percent student poverty rate before they may consolidate funds to implement schoolwide reform programs. 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. All seven active Ed-Flex States reported activity in this area; five States issued new waivers of that provision and five States reported having ongoing waivers. Pennsylvania reported details on the usefulness of this waiver in its State report, stating that, with the waiver, Title I funds can be used to improve the educational program of an entire school that nearly qualifies for the poverty threshold, a school that would not otherwise be eligible to consolidate funds and use them to upgrade its entire educational program. With the waiver, such a school is able to allow more students who are failing, or in danger of failing, to receive Title I services.

Some States also waived provisions of section 1113 of the ESEA related to the within-LEA allocation of Title I, Part A funds. Massachusetts and Pennsylvania waived the within-LEA allocation requirements of section 1113(a)(2)(B) so that individual schools in attendance areas that had lower rates of poverty but a greater need for services could receive Title I services to improve their student achievement. In addition, Pennsylvania and Texas have issued similar waivers of section 1113, and Texas reported that its three ongoing waivers of section 1113(c)(1) allowed its LEAs the flexibility to allocate their Title I, Part A funds to individual schools based on the schools' needs rather than on the percentage of students from low-income families. The three LEAs for which Texas had ongoing waivers had received them from the State for three years starting in SY 2006-07 and SY 2007-08.

Four States—Massachusetts, Pennsylvania, Texas, and Vermont—waived portions of ESEA section 1127, which limits the amount of Title I funds that an LEA may carry over from one year to the next. Absent Ed-Flex, an SEA could grant an LEA a waiver of this carryover limitation only once every three years.

Two States waived portions of ESEA section 1119. Texas waived section 1119(d), which established a timeframe by which existing paraprofessionals had to meet certain standards, such as the attainment of an associate's degree (or higher) or passing State assessments of knowledge and ability to assist in instruction. North Carolina issued a new waiver of section 1119(l) to one LEA, waiving the required reservation of funds for professional development, which allowed the school to increase funding for the maintenance of instructional staff.

Finally, Pennsylvania issued waivers of the Education Department General Administrative Regulations (EDGAR) at 34 CFR sections 80.21(i) and 80.23. The waiver of all of 34 CFR section 80.23 allowed one LEA to liquidate its ESEA Title II and Title III funds outside the prescribed 90-day window for post-obligation drawdowns; the waiver of section 80.21(i) allowed that LEA to retain the interest accrued on its Title II and Title III funds. After learning about the

waiver related to the retention of interest, the Department informed Pennsylvania that it was impermissible under Ed-Flex authority. The State has reported that it no longer approves requests to waive regulations relating to the retention of interest.

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.

STATE-BY-STATE ED-FLEX WAIVER ACTIVITIES

This section profiles the waiver activity for each of the seven States that carried out Ed-Flex waiver activities in SY 2008-09. 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 no new waivers in SY 2008-09. The State reported six ongoing waivers of ESEA section 1114(a)(1) to schools wishing to operate schoolwide programs, three waivers for three years issued in SY 2006-07 and three more issued in SY 2007-08. These waivers allowed seven individual schools in the six LEAs to waive the minimum poverty threshold that a school must satisfy to consolidate funds in a schoolwide reform program. The affected schools' poverty rates in their respective school attendance areas ranged from 26 to 38 percent, below the statutory threshold of 40 percent.

The State reported that these schools were targeting students who were scoring unsatisfactory or "partially proficient" on statewide assessments. The goal was to move significant numbers of these students to grade level and decrease the number of students scoring unsatisfactory or partially proficient. Specific activities that these consolidated funds made available included a professional development program for teachers focused on improving the achievement of the lowest performing students and English language learners and teacher training in the use of data to inform instruction and monitor progress. In addition, one school hosted parent literacy nights to engage parents in their children's academic progress and provide strategies and activities to promote literacy in the home. Finally, schools are working toward closing the achievement gaps between subgroups. There is a focus on promoting best practices, including formative assessments, progress monitoring, Response to Intervention (RtI), and differentiated instruction.

The State reported that five of the six LEAs (five of the seven individual schools) made adequate yearly progress (AYP) in SY 2008-09. It further indicated that Ed-Flex had afforded the schools the flexibility to develop and implement programs, such as RtI, that lead to increased student achievement, and that the staff at participating schools had increased their professional knowledge and ability to use data to drive instructional practices.

New Waivers

- None.

Extension Waivers

- None.

Ongoing Waivers

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

Monitoring and Technical Assistance

The SEA conducts annual reviews to determine if LEAs and schools are meeting annual Ed-Flex goals. LEAs and schools that are granted waivers are required to submit a plan and to report on their progress annually for the duration of the waiver. The progress report must address the impact the waiver had on improving academic achievement at the LEA or school, including the

effectiveness of the approved plan and the attainment of the identified specific, annual measurable objective (AMOs). If a school or LEA does not meet its AMOs, the school or LEA provides the SEA with an additional report addressing why the goals were not met and provides an action plan. The SEA then meets with the school or LEA to create a revised plan that aligns its activities and strategies with current and anticipated student achievement and growth.

The State reported that in SY 2008-09 two schools with ongoing waivers did not meet their AMOs. The State reported that it has worked with these schools and that they have submitted revised plans with revised goals, which the State will closely monitor during the subsequent school year. Ultimately, the waiver is subject to termination by the State if the schools continue to miss their AMOs.

DELAWARE

Active Waivers

Delaware granted four new waivers of ESEA section 1114(a)(1) in SY 2008-09 in addition to six ongoing waivers of section 1114(a)(1) granted in previous years. The schools receiving waivers were permitted to operate schoolwide programs even though the schools' poverty rates were generally below 40 percent, the minimum poverty rate established by the ESEA. The SEA used its Ed-Flex authority to enable 17 schools with poverty rates ranging from 6.07 percent to 36.60 percent to consolidate their funds to implement schoolwide reform programs. The SEA also reported on one ongoing waiver of section 1114(a)(1) that it had issued to a school having a borderline poverty rate each year; that waiver was already in place even though the poverty rate at that school was slightly greater than 40 percent in SY 2008-09.

New Waivers

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

Extension Waivers

- None

Ongoing Waivers

- Title I schoolwide reform eligibility waivers (ESEA section 1114(a)(1)): granted to six LEAs, affecting 13 schools.

Monitoring and Technical Assistance

The SEA accepts Ed-Flex waiver applications on an ongoing basis, and the SEA notifies the LEAs of the status of their waiver requests, in writing and electronically, within 60 days of application. An Ed-Flex manager coordinates the application process and offers technical assistance to LEAs.

The SEA conducts monitoring annually. In the fall, monitoring involves the collection of compliance documents (schoolwide plans, parent policies, compacts and other required materials in a schoolwide program). During on-site monitoring, the SEA reviews assess the impact of an LEA's schoolwide education program strategies and objectives. Each of the State's program managers participates in monitoring reviews and provides feedback on issues to be investigated further, discussed, or addressed with an LEA. Topics of discussion during monitoring reviews include intermediate targets to help the LEA make AYP, discussions of student performance on local assessments, and reviews of data. At the end of a site visit, the LEAs receive feedback on their implementation of programs and program waivers.

The State reported that at the end of SY 2008-09 all LEAs participating in Ed-Flex were in good standing. Ed-Flex authority has allowed schools to provide services to pupils based on individual schools' academic needs rather than by poverty statistics; the LEAs have used waivers to develop and implement comprehensive programs to serve the needs of all their pupils rather

than being forced to target small groups. Of the 13 schools that had ongoing waivers in SY 2008-09, 10 schools (79 percent) made AYP.

MASSACHUSETTS

Active Waivers

Massachusetts granted six new waivers in SY 2008-09. Two of the new waivers were of ESEA section 1127(b), which generally prohibits an LEA from carrying over more than 15 percent of its Title I, Part A funds into the next school year, but allows the State to waive that provision by statute once every three years. The Ed-Flex waiver in this instance allowed the State to issue statutory waivers more frequently, with the effect that its LEAs were permitted to carry over greater than 15 percent of their Title I funds into the next school year more than once in a three-year period.

The State reported one new and one ongoing waiver of ESEA section 1114(a)(1), which establishes a minimum poverty threshold for implementing a schoolwide reform program. The State reported that the waivers allowed schools with poverty rates ranging from 37.6 percent to 39.1 percent to consolidate their funds to implement schoolwide reform programs.

Finally, the State granted three new waivers of ESEA section 1113(a)(2)(B). That section generally makes schools eligible for Title I, Part A funds only when they serve areas that have a poverty rate as high as the average for the LEA as a whole. The State reported that the waiver allowed three schools to qualify for Title I, Part A funds that otherwise would not have been eligible.

New Waivers

- Title I eligible school attendance area waiver (ESEA section 1113(a)(2)(B)): granted to three LEAs, affecting three schools.
- Title I schoolwide reform eligibility waivers (ESEA section 1114(a)(1)): granted to one LEA, affecting one school.
- Title I, Part A carryover limitation waivers (ESEA section 1127(b)): granted to two LEAs, affecting 10 schools.

Extension Waivers

- None

Ongoing Waivers

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

Monitoring and Technical Assistance

The State reported that it provides technical assistance and constructive feedback to each LEA applying for and receiving an Ed-Flex waiver to ensure the outcomes that LEA is seeking in its waiver request are achieved. During compliance reviews, the LEAs and schools that receive waivers are monitored for their adherence to the conditions under which the State granted the waiver. The LEAs' required documentation differs by waiver but often includes revised school improvement plans, program evaluation summaries showing the impact of the waiver on student

achievement, and descriptions of professional development activities and their relevance to the schools' academic needs.

NORTH CAROLINA

Active Waivers

North Carolina granted three new waivers in SY 2008-09. The State granted two waivers of ESEA section 1114(a)(1) to schools with poverty rates of 34.95 percent and 39.92 percent. The State reported that activities implemented under the schoolwide programs included professional development based on a needs assessment, effective and timely tutorial services for all students at risk of failing State standards, and enhanced teacher participation in assessment decisions.

North Carolina also granted a waiver of the teacher and paraprofessional qualification requirements in ESEA section 1119(l), which waived the required reservation of funds for professional development. The State reported that the LEA increased funding to avoid layoffs among its instructional staff in order to continue schoolwide reform efforts and to ensure sustainability of high student achievement outcomes.

New Waivers

- Title I schoolwide reform eligibility waivers (ESEA section 1114(a)(1)): granted to two LEAs, affecting three schools.
- Professional qualification requirements (ESEA section 1119(l)): granted to one LEA, affecting one school.

Extension Waivers

- None

Ongoing Waivers

- None

Monitoring and Technical Assistance

The SEA began implementing comprehensive monitoring for all Federal programs beginning in SY 2006-07. The steps that North Carolina has taken to monitor and provide oversight to LEAs include: an annual review of the LEA's Title I application, ongoing discussions and feedback about compliance and waiver implementation at regional directors meetings, and individual technical assistance to LEAs. The State reported that much of its oversight occurs prior to the issuance of waivers, and at the end of the waiver period the State makes an evaluation to determine how well the schools are progressing.

The State reported that it has a strong accountability program. The State's accountability model, called *ABCs of Public Education*, holds all schools accountable for academic growth (computed at the student level and presented as an overall growth status for the school) and student achievement measured as the percentage of students who score at or above grade level (presented as a composite score).

Though the State reported that it was unable to attribute its LEAs' performance to their participation in Ed-Flex, the State did not find any schools or LEAs with waivers not meeting their specific, measurable educational goals for SY 2008-09.

PENNSYLVANIA

Active Waivers

The Pennsylvania Department of Education (PDE) granted 29 new waivers and had one ongoing waiver in SY 2008-09. Twenty-four waivers were of ESEA section 1113(a)(2)(B), which generally makes individual schools eligible for Title I, Part A funds only when they serve areas that have a poverty rate at least as high as the average for the LEA as a whole. The State reported that the waivers allowed more children to receive educational support services and additional teachers to participate in professional development activities, increased supplemental educational materials and supplies for students and teachers, increased student access to technology, and made more parental involvement activities available.

The State also reported that it issued one new waiver of ESEA section 1113(c)(1), which requires that LEAs allocate Title I, Part A funds to individual schools based on poverty. According to the State, the waiver allowed the School District of Philadelphia (SDP) to allocate Title I funds to eligible school attendance areas or schools out of rank order. SDP used this waiver to ensure that the neediest schools and students received the most support and also that each school did not receive less than 80 percent of the previous year's allocation.

The State granted two waivers ESEA section 1114(a)(1), permitting three individual schools with poverty rates ranging from 9.34 percent to 34 percent to operate schoolwide programs. The State reported that these waivers enabled the affected schools to better target their resources to address specific needs: students no longer must be "targeted" for services and therefore more students who are failing or who are in danger of failing may receive Title I services.

One ongoing waiver of ESEA section 1127 allowed an LEA to carry over more than 15 percent of its Title I allocation in order to support parental involvement activities.

Finally, the State reported that it granted two waivers of Department regulations. A blanket waiver of the EDGAR provisions at 34 CFR section 80.23 allowed one LEA to liquidate its Federal Title II and Title III funds outside the prescribed 90 day window for post-obligation drawdowns. A separate waiver of 34 CFR section 80.21(i) allowed that LEA to retain the interest accrued on its Title II and Title III funds. Since issuing the waiver of 34 CFR section 80.21(i), the State has been informed that the waiver was impermissible under Ed-Flex authority. The State has reported that it no longer accepts or approves requests to waive that regulation.

New Waivers

- Title I eligible school attendance area waiver (ESEA section 1113(a)(2)(B)): granted to 24 LEAs, affecting 30 schools.
- Title I within-district allocation waiver (ESEA section 1113(c)(1)): granted to one LEA, affecting 265 schools.
- Title I schoolwide reform eligibility waiver (ESEA section 1114(a)(1)): granted to two LEAs, affecting three schools.

- Interest earned on advances (EDGAR section 80.21(i)): granted to one LEA, affecting 265 schools.⁴
- Period of availability of funds (EDGAR section 80.23): granted to one LEA, affecting 265 schools.

Extension Waivers

- None

Ongoing Waivers

- Title I, Part A carryover limitation waivers (ESEA section 1127): granted to one LEA, affecting one school.

Monitoring and Technical Assistance

PDE's Division of Federal Programs (DFP) annually reviews the performance of LEAs in light of the goals provided in their 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 may be revoked. No Ed-Flex schools were identified as not meeting the specific, measurable educational goals established in their waiver applications.

The DFP monitors LEAs receiving approved waivers through on-site visits to help ensure that the goals established in the waiver applications are being met. The Ed-Flex regional coordinators review the educational improvement goals in the Ed-Flex waiver application to verify the LEAs' progress toward meeting their goals. The DFP has developed an instrument to assess the effectiveness of the Ed-Flex program. This instrument is used to assess the impact on the program of any school that was granted a waiver.

LEAs are evaluated during periodic monitoring visits to determine whether the waiver authority and waivers are working. Regional coordinators and program monitors are encouraged to consult with the State's Ed-Flex waiver project manager prior to conducting technical assistance visits and monitoring visits. The specific reasons for requesting waivers are discussed in advance of the visits and are reviewed during the visits.

⁴ In the spring of 2009, 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.

TEXAS

Active Waivers

Texas granted 18 new waivers in SY 2008-09 that affected 60 individual schools. The State also had 48 ongoing waivers from previous years affecting 169 individual schools. In addition, Texas granted a number of statewide administrative waivers to LEAs for the duration of Texas' waiver authority.⁵

The State granted nine new waivers and had 45 ongoing waivers of ESEA section 1114(a)(1), permitting schools to operate schoolwide programs even though the schools' poverty rates were below 40 percent, the minimum poverty rate established by the ESEA. The State reported that the nine schools receiving new waivers had planned for reforms in SY 2007-08, and that the waivers enabled the schools to undertake their reform plans in SY 2008-09. Further, the State reported that for the 45 LEAs with ongoing waivers, the flexibility afforded by operating a schoolwide program, in lieu of a targeted assistance program, allowed administrators to implement a comprehensive education program for their entire campus, and that the success of this waiver can be evidenced by the fact that 83 out of 84 schools receiving the waiver made AYP.

The State granted one waiver of ESEA section 1119(d), which requires paraprofessionals who were hired prior to the reauthorization of the ESEA and who work in Title I, Part A schools, to meet certain requirements such as the attainment of an associate's degree (or higher) or the passing of a State assessment of quality. The State reported that one waiver was granted to allow an LEA the flexibility to retain for one year non-qualified paraprofessionals at schools that were being funded by Title I, Part A funds for the first time.

The State granted eight new waivers of ESEA section 1127(b). These Ed-Flex waivers allowed 47 individual schools to carry over greater than 15 percent of their funds even though they had already used the statutory waiver provided in section 1127 within the prior three years.

Finally, the State reported three ongoing waivers of ESEA section 1113(c)(1), which requires that LEAs allocate Title I, Part A funds to individual schools based on poverty. According to the

⁵ Texas has 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 sections 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 sections 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.

State, these waivers provided LEAs with flexibility to allocate funds out of rank order of poverty, enabling officials to make staffing decisions based on each school's educational needs rather than its poverty statistics.

New Waivers

- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to nine LEAs, affecting 11 schools.
- Professional qualification requirements (ESEA section 1119(d)): granted to one LEA, affecting two schools.
- Title I, Part A carryover limitation waivers (ESEA section 1127(b)): granted to eight LEAs, affecting 47 schools.

Extension Waivers

- None

Ongoing Waivers

- Title I within-district allocation waiver (ESEA section 1113(c)(1)): granted to three LEAs, affecting 85 schools.
- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to 45 LEAs, affecting 84 schools.

Monitoring and Technical Assistance

The State reported that 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.

The State has implemented a monitoring and intervention system called the Performance-Based Monitoring Analysis System (PBMAS) that 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 through 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, the application to renew the waiver will be denied. The State reported that one LEA that was in year two of a three-year waiver during SY 2008-09 did not meet the measurable goals established in its Ed-Flex waiver application. If the LEA does not meet AYP in SY 2009-2010, the LEA will not be allowed to apply for a continuation of the waiver beyond SY 2009-10.

VERMONT

Active Waivers

The State granted two new waivers of ESEA section 1127(a) in SY 2008-09. The State had already exercised the waiver authority provided in section 1127(b) during SY 2007-08, and the Ed-Flex waivers of section 1127(a) allowed three schools in two LEAs to carry over more than the statutory 15 percent of their Title I funds into the next year. The State also reported that it maintained four ongoing waivers of ESEA section 1114(a)(1).

The State reported that these two types of waivers enabled LEAs to achieve greater coherence in their efforts to ensure that all students achieve challenging standards, particularly by giving LEAs the ability to expend funds on schoolwide programs rather than on targeted assistance programs, which allowed the funds to affect more students.

New Waivers

- Title I, Part A carryover limitation waivers (ESEA section 1127(a)): granted to two LEAs, affecting three schools.

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

Oversight of waivers and technical assistance sessions begin each April during the annual application review process. Seven Consolidated Federal Program (CFP) staff members review waiver applications individually and, for select LEAs, as a team. The CFP team offers technical assistance in person and by phone to LEAs seeking waivers.

Additionally, the State monitors all LEAs, including Ed-Flex LEAs, with its CFP team and Federal fiscal monitoring team. The teams' schedules are designed so that they typically do not overlap; most LEAs are visited at least twice in a five year period. The State reported that it uses these visits to monitor LEAs receiving waivers of ESEA section 1114.

CONCLUSION

Ed-Flex continues to be a factor in enabling the flexible use of LEAs' funds and helping LEAs and schools carry out educational reforms to raise the achievement levels of students. States have expressed a desire to continue using the Ed-Flex waiver authority. States reported that they use their Ed-Flex authority as an important strategy in removing statutory and regulatory barriers that impede local reform efforts and providing flexibility to develop innovative strategies to improve student achievement. Every active Ed-Flex State reported that its waivers of ESEA section 1114(a)(1) allowed otherwise-ineligible schools to implement schoolwide programs, and almost every active Ed-Flex State reported that it was able to customize services based on schools' needs as a result of receiving Ed-Flex waivers.

States generally reported 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 reported, however, that the effects of the waivers on student achievement are seldom clear; the States have difficulty attributing 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 desire to continue to use Ed-Flex authority and provided examples of the successes achieved by using the program:

According to Massachusetts, waiving the eligibility requirement for schoolwide reform programs helped the State encourage innovation in planning and achieve more efficient and effective intervention for students who were furthest from meeting State standards. Texas reported positive results from the use of Ed-Flex waivers of section 1113(c)(1). According to that 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 a valuable tool for budget management, to increase the number of mentors and coaches for teachers, and to try new strategies for academically at-risk students such as through after-school programs. North Carolina reported that its waiver of section 1119(l) for one school allowed that school to redirect teacher training funds toward an area of greater need: the maintenance of instructional staff during a period of potential layoffs.

States reported conducting 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 broader school improvement strategies. The Department will continue to encourage this type of comprehensive monitoring for all Ed-Flex waivers. Some States have used information collected through monitoring to drive technical assistance and to educate additional LEAs about the Ed-Flex authority.

The Department has refocused its overall monitoring and technical assistance activities to put greater emphasis on allowable uses of the Ed-Flex waiver authority and has strengthened its Ed-Flex virtual and desk monitoring procedures to ensure that States understand fully the scope and limitations of the Ed-Flex waiver authority.

Active Ed-Flex Waivers During SY 2008-09

State	Requirement Waived	New Waivers	Extension Waivers	Ongoing Waivers	Total Schools Affected
Colorado	Title I poverty threshold for consolidation (Section 1114(a)(1))	0	0	6	7
Delaware	Title I poverty threshold for consolidation (Section 1114(a)(1))	4	0	6	18
Kansas	N/A	0	0	0	0
Maryland	N/A	0	0	0	0
Massachusetts	Title I poverty requirement (Section 1113(a)(2)(B))	3	0	0	3
	Title I poverty threshold for consolidation (Section 1114(a)(1))	1	0	1	3
	Title I carry-over funds 3 year limitation (Section 1127(b))	2	0	0	10
North Carolina	Title I poverty threshold for consolidation (Section 1114(a)(1))	2	0	0	3
	Professional Requirements (Section 1119(l))	1	0	0	1
Oregon	N/A	0	0	0	0
Pennsylvania	Title I school eligibility (Section 1113(a)(2)(B))	24	0	0	30
	Title I within-district allocations (Section 1113(c)(1))	1	0	0	265
	Title I poverty threshold for consolidation (Section 1114(a)(1))	2	0	0	3
	Title I limit on carryover funds (Section 1127)	0	0	1	1
	Interest earned on advances EDGAR section 80.21(i)	1	0	0	265
	Period of availability of funds EDGAR section 80.23	1	0	0	265
Texas	Title I within-district allocations (Section 1113(c)(1))	0	0	3	85
	Title I poverty threshold for consolidation (Section 1114(a)(1))	9	0	45	95
	Paraprofessional Requirements (Section 1119(d))	1	0	0	2
	Title I carry over funds (Section 1127(b))	8	0	0	47
	Requests for Approval EDGAR 74.25(c)(6), 74.27, 80.22, 80.33(b), as applicable	0	0	1	All schools
	Submission to Transfer Funds for Training Costs EDGAR sections 74.25(c)(7), 80.30(c)(1)(iii), as applicable	0	0	1	All schools
	Certification that an Employee Is Funded from a Single Source OMB Circular A-87, Attachment B, 11(h)(3)	0	0	1	All schools
Vermont	Title I poverty threshold for consolidation (Section 1114(a)(1))	0	0	4	9
	Title I limit on carryover funds (Section 1127(a))	2	0	0	3
TOTAL		62	0	69	