



**REPORT TO CONGRESS
ON ACTIVITIES CARRIED OUT BY STATES
DURING SCHOOL YEAR 2009–10
UNDER THE EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999**

INTRODUCTION

Under the Education Flexibility Partnership Act of 1999 (Ed-Flex statute), as amended, 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) 2009–10.

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. Maryland and Oregon had no waiver activity during SY 2009–10 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 of 2006 (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 2009–10, a total of 185 waivers were in effect across the eight active Ed-Flex States: 108 were new waivers, three were extensions of previously granted waivers, and 74 were ongoing waivers.³ All but six waivers in effect during SY 2009–10 were waivers of the requirements of Title I, Part A.

¹ The Emergency Immigrant Education program, the Comprehensive School Reform program, the Innovative Programs, and the Safe and Drug-Free Schools and Communities Program 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 2009–10. An *ongoing waiver* is a waiver that an SEA granted prior to SY 2009–10 and that remained in effect during SY 2009–10.

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 this within-LEA allocation requirement 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 eight active Ed-Flex States reported activity in this area; all of those States issued new waivers of that provision and seven 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. Pennsylvania and Texas waived the within-LEA allocation requirements of section 1113(c)(1) so that LEAs could 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. Joined by Massachusetts, Pennsylvania also issued waivers of ESEA section 1113(a)(2)(B) to several LEAs, which allowed several schools to qualify for Title I, Part A funds that otherwise would not have been eligible. Finally, Vermont waived the "125 percent rule" in section 1113(c)(2)(A)⁴, which allowed one LEA in Vermont to provide a school having a large number of students from low-income families with more Title I, Part A funds than otherwise would have been permissible.

Three States—Kansas, North Carolina, and Texas—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.

Finally, two States issued statewide waivers. Texas had ongoing statewide waivers of certain Education Department General Administrative Regulations (EDGAR), which the State used to eliminate the need for LEAs to request specific approval for items budgeted in certain class/object codes, eliminate the need for LEAs to obtain an amendment to transfer funds budgeted for training costs that are direct payments to trainees so long as the program description in the application remains unchanged, and to eliminate the requirement that employees provide biannual certifications that they worked 100 percent on a program or cost objective as long as the employee's job description clearly reflected this. North Carolina also issued three statewide waivers of the Tydings Amendments to extend the period of obligation of Enhancing Education Through Technology (EETT) funds.

without any additional action by the SEA. An *extension waiver* is a waiver that an SEA previously granted and extended during SY 2009–10 beyond the original expiration date.

⁴ Under the "125 percent rule", the per-pupil amount of Title I, Part A funds allocated to a school generally must be at least 125 percent of the per-pupil of such funds the LEA received that year.

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 2009–10. A table 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 five new waivers of ESEA section 1114(a)(1) to schools wishing to operate schoolwide programs in SY 2009–10. The State also reported three ongoing waivers of section 1114(a)(1), each issued in SY 2007–08 for three years. These waivers allowed ten individual schools in eight 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 the schools with these waivers have created innovative programs designed to have measureable impacts on student achievement. One middle school focused on creating an interdisciplinary learning environment with the aim of boosting student literacy skills. Several schools focused on implementing a Response to Intervention (RtI) model schoolwide, a framework that promotes a well-integrated system connecting general, compensatory, gifted, and special education in providing high quality, standards-based instruction and intervention that is matched to students' academic, social, emotional, and behavioral needs. Several schools with waivers were also able to hire additional staff members for literacy and math skills and interventions. Two schools implemented flexible student grouping based on performance level, which allowed students to receive attention and instruction specific to their needs. All schools set high achievement expectations for students in literacy and math; for lower performing schools, the expectation was to move a critical number of students from unsatisfactory or partially proficient to proficient; for the higher performing schools, the goal was, at a minimum, to maintain student proficiency levels, with the expectation that students would reach advanced levels.

The State reported that all schools receiving waivers focused on professional development. Development opportunities included instruction on best practices, standards implementation, and data driven instruction. Several schools developed professional learning communities to focus on teacher-identified areas of need.

New Waivers

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

Extension Waivers

- None

Ongoing Waivers

- Title I schoolwide reform eligibility waivers (ESEA section 1114(a)(1)): granted to three LEAs, affecting four 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) and adequate yearly progress (AYP). In the event a waiver school does not meet its goals or objectives, program staff requests a written report from the school or district that addresses the reasons why the school did not meet its goals. The report serves as a basis for program staff and the school or district to have a conversation about the missed goals, as well as collaboratively strategize on ways to meet the goals in the future and/or revise goals to be more meaningful and attainable.

The State reported that in SY 2009–10 all but one school with an ongoing waiver made AYP and the waiver goals. The elementary school that did not meet its waiver goals was in the final year of its three-year waiver. The State believes that some of the goals established when the waiver was implemented were not realistic and has informed the school that it needs to demonstrate significant growth in student achievement to be considered for a new waiver in the immediate future.

Finally, the State reported that every district in the State receives an onsite monitoring visit for compliance with ESEA requirements in a five year cycle. Monitoring staff integrate Ed-Flex monitoring into the overall Title I monitoring process.

DELAWARE

Active Waivers

The Delaware Department of Education (DDOE) granted six new waivers of ESEA section 1114(a)(1) in SY 2009–10 in addition to eight 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 21 schools with poverty rates ranging from 7.3 percent to 38.3 percent to consolidate their funds to implement schoolwide reform programs. In addition, the SEA reported that it had one ongoing waiver of section 1114(a)(1) that it had issued to a school having a borderline poverty rate each year; that ongoing waiver was already in place even though the poverty rate at that school was slightly greater than 40 percent in SY 2009–10.

The State also granted four new waivers of ESEA section 1127(a) in SY 2009–10. The State had already exercised the waiver authority provided in section 1127(b) during SY 2008–09, and the Ed-Flex waivers of section 1127(a) allowed 11 schools in four LEAs to carry over more than the statutory 15 percent of the Title I funds that they received under the American Recovery and Reinvestment Act (ARRA) into the next year. The State reported that it believes the waivers will allow the LEAs to more effectively meet their goals associated with the use of their increased funds under ARRA by spreading the funds over a two year period and extending the reporting period for the uses of those funds.

New Waivers

- Title I schoolwide reform eligibility waivers (ESEA section 1114(a)(1)): granted to six LEAs, affecting 11 schools.
- Title I, Part A carryover limitation waivers (ESEA section 1127(a)): granted to four LEAs, affecting 22 schools.

Extension Waivers

- None

Ongoing Waivers

- Title I schoolwide reform eligibility waivers (ESEA section 1114(a)(1)): granted to eight LEAs, affecting 11 schools.

Monitoring and Technical Assistance

The DDOE notifies all LEAs of the application period in writing at least one month before the application period starts and also provides information on Ed-Flex during statewide meetings. The DDOE accepts Ed-Flex waiver applications on an ongoing basis, and the Ed-Flex manager coordinates the application process and offers technical assistance to LEAs and notifies the LEAs of the status of their waiver requests, in writing and electronically, within 60 days of application.

The DDOE conducts monitoring of educational programs annually throughout the year in the form of desk audits, internal audits and on-site monitoring. Desk audits involve the collection and review of compliance documents (schoolwide plans, parent policies compacts and notifications and other required materials in a schoolwide program) and each school's success plan is reviewed by DDOE to ensure the plans include specific annual, measurable objectives (AMOs). Internal audits involve the collection and review of information and data available electronically either through our data systems or through the internet, including required website postings and online success plans. The DDOE uses protocols for each internal audit and desk audit to provide feedback to each LEA on its implementation of programs and program waivers. The State further reported that all LEAs were monitored on-site during SY 2009–2010. On-site monitoring involved a review of the impact of an LEA's schoolwide education program strategies on its goals and objectives and other compliance documents. 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.

The DDOE reported that 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 eight LEAs that had ongoing waivers in SY 2009–10, six (75 percent) made AYP.

KANSAS

Active Waivers

The State issued three waivers of the schoolwide poverty threshold under ESEA section 1114(a)(1). Kansas highlighted the usefulness of these schoolwide waivers in serving more students during SY 2009–10 with the additional Title I funds provided under ARRA. The State reported that many Kansas schools are implementing Multi-Tiered System of Supports (MTSS) to ensure that all students' learning needs are being met and ultimately to increase student achievement. The State asserted that the schoolwide model is more conducive to MTSS than is the Title I Targeted Assistance School model. All staff members in each school have a responsibility to ensure that the schoolwide plan is implemented so as to positively impact student learning and to make AYP.

Additionally, the State issued one new district-wide waiver 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 an LEA was permitted to carry over greater than 15 percent of its Title I funds into the next school year more than once in a three-year period.

New Waivers

- Title I schoolwide eligibility waiver (ESEA section 1114(a)(1)): granted to three LEAs, affecting four schools.
- Title I, Part A carryover limitation waivers (ESEA section 1127(b)): granted to one LEA, affecting one school.

Extension Waivers

- None

Ongoing Waivers

- None

Monitoring and Technical Assistance

The primary monitoring of Ed-Flex waivers is through desktop monitoring. Each school and district with an Ed-Flex waiver has its AYP reports, report cards and assessment data reviewed by the Assistant Director of Title Programs and Services to ensure that all districts and schools affected by the Ed-Flex waivers are meeting annual goals. In addition, data relating to any specific goals that were included in the Ed-Flex waiver applications are collected and reviewed and the State reviews Title I schoolwide and continuing schoolwide applications to ensure they support what was included in the Ed-Flex waiver request.

In addition, the Ed-Flex review includes on-site monitoring where appropriate. The State gathers and analyzes information gathered from desktop and onsite monitoring and provides feedback to

the districts. The State considers the information obtained through monitoring when districts seek new waivers.

MASSACHUSETTS

Active Waivers

Massachusetts granted 10 new waivers in SY 2009–10. Three of the new waivers were of the schoolwide poverty threshold in ESEA section 1114(a)(1). The State also reported two ongoing waivers of that section. The State reported that the section 1114(a)(1) waivers allowed schools with poverty rates ranging from 36.3 percent to 39.5 percent to consolidate their funds to implement schoolwide reform programs.

Additionally, the State granted seven 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 waivers allowed eight 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 seven LEAs, affecting eight schools.
- Title I schoolwide reform eligibility waivers (ESEA section 1114(a)(1)): granted to three LEAs, affecting three schools.

Extension Waivers

- None

Ongoing Waivers

- Title I schoolwide reform eligibility waivers (ESEA section 1114(a)(1)): granted to two LEAs, 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 the 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 fourteen new waivers in SY 2009–10. The State granted 10 new waivers of ESEA section 1114(a)(1) and had two ongoing waivers of that section issued in SY 2008–09. The State reported that the new section 1114(a)(1) waivers allowed schools with poverty rates ranging from 35.91 percent to 39.69 percent to consolidate their funds to implement schoolwide reform programs. 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 parental involvement to increase participation in school decision making.

North Carolina also granted a statewide waiver of the Title I, Part A carryover limitation in ESEA section 1127. Absent Ed-Flex, the SEA could grant an LEA a waiver of this carryover limitation only once every three years. The State reported that it issued the waiver to allow its LEAs to best make use of the significant one-time increase provided through ARRA. With the waiver, districts were able to reserve a portion of the FY 2009 ARRA funds to continue their efforts during the next fiscal year, which reduced the potential effects of an abrupt end to funds.

Finally, North Carolina granted statewide waivers of the Tydings Amendment for its grantees under three separate EETT grants. Under the Tydings Amendment, funds under a State-administered formula grant program must be obligated by the end of the fiscal year succeeding the fiscal year for which the funds were appropriated. One waiver extended the obligation period for FY 2008 EETT funds from September 30, 2010 to September 30, 2011, and two other waivers extended the obligation period for FY 2009 regular and ARRA EETT funds from September 30, 2011 to September 30, 2012. The State reported that the waivers allowed outside evaluators to finish their technology evaluations, that the funds spent during the extension were minimal, and that the increased timeframe under the waivers allowed for more formative and summative feedback to the IMPACT Model School initiative, improving teacher performance and student achievement.

New Waivers

- Title I schoolwide reform eligibility waivers (ESEA section 1114(a)(1)): granted to 10 LEAs, affecting 12 schools.
- Title I limitation on carryover funds (ESEA section 1127): granted statewide, affecting all schools.
- Tydings Amendments for EETT program: granted statewide, affecting all schools.

Extension Waivers

- None

Ongoing Waivers

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

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, compliance monitoring and program quality reviews, 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, and not all LEAs with waivers made AYP, the State did not find any schools or LEAs with waivers not meeting their specific, measurable educational goals for SY 2009–10.

PENNSYLVANIA

Active Waivers

The Pennsylvania Department of Education (PDE) granted 38 new waivers and had nine ongoing waivers and one extension waiver in SY 2009–10. Eighteen new waivers and six ongoing 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 had one ongoing waiver of ESEA section 1113(c)(1) issued in SY 2008–09, 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 also granted 20 new waivers of ESEA section 1114(a)(1) in addition to two ongoing waivers of that section, permitting 29 individual schools with poverty rates ranging from 9 percent to 39 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. In 2009, PDE reported that it would no longer approve requests for new waivers of section 1114(a)(1) if the poverty level of the requesting school is less than 30 percent; PDE did not issue any new waivers of that section to LEAs with poverty rates less than 30 percent in SY 2009–10.

New Waivers

- Title I eligible school attendance area waiver (ESEA section 1113(a)(2)(B)): granted to 18 LEAs, affecting 23 schools.
- Title I schoolwide reform eligibility waiver (ESEA section 1114(a)(1)): granted to 20 LEAs, affecting 26 schools.

Extension Waivers

- Title I eligible school attendance area waiver (ESEA section 1113(a)(2)(B)): granted to one LEA, affecting two schools.

Ongoing Waivers

- Title I eligible school attendance area waiver (ESEA section 1113(a)(2)(B)): granted to six LEAs, affecting six schools.
- Title I within-district allocation waiver (ESEA section 1113(c)(1)): granted to one LEA, affecting 266 schools.

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

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.

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 and to evaluate and 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 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, which it uses to assess the impact on the program of any school that was granted a waiver.

TEXAS

Active Waivers

Texas granted 22 new waivers in SY 2009–10, which affected 67 individual schools. The State also had 43 ongoing waivers and two waivers extended 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 16 new waivers and had 42 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 23 schools receiving new waivers had reform plans in place, and that the waivers enabled the schools to undertake their reforms. Further, the State reported that for the 42 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 all schools receiving the waiver made AYP.

The State granted six new waivers of ESEA section 1127(b) in SY 2009–10. These Ed-Flex waivers allowed 44 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 one ongoing and two extended 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 State, the waivers provided the LEAs flexibility to allocate funds out of rank order of poverty, and instead to allocate funds based on identified needs in their district improvement plans, enabling officials to make staffing decisions based on each school's educational needs rather than on its poverty statistics.

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.

New Waivers

- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to 16 LEAs, affecting 23 schools.
- Title I, Part A carryover limitation waivers (ESEA section 1127(b)): granted to six LEAs, affecting 44 schools.

Extension Waivers

- Title I within-district allocation waiver (ESEA section 1113(c)(1)): granted to two LEAs, affecting 60 schools.

Ongoing Waivers

- Title I within-district allocation waiver (ESEA section 1113(c)(1)): granted to one LEA, affecting 32 schools.
- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to 42 LEAs, affecting 77 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 in the LEA or a school's 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 using 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. The State reported that one LEA did not meet the measurable goals established in its Ed-Flex waiver application, specifically not making AYP due to its mathematics performance and graduation rate. The State Ed-Flex Committee reviewed the LEA's performance, and the Commissioner of Education terminated the waiver

prior to the waiver's third year. The LEA appealed the termination decision and the Committee recommended reinstatement of the waiver. Upon appeal, the Committee recommended, and the Commissioner agreed, that the LEA was continuing to advance student learning and that continuing the waiver would allow the LEA to best serve its students with Title I funds. The LEA made AYP in SY 2009–10; of the 10 campuses that did not make AYP in SY 2008–09, eight made AYP in SY 2009–10. If the LEA does not meet AYP in SY 2010–11, the State will not allow it to apply for a continuation of the waiver.

VERMONT

Active Waivers

The State had four ongoing waivers and granted four new waivers of ESEA section 1114(a)(1), permitting LEAs that did not meet the requisite poverty threshold to operate schoolwide programs. The State reported that its small schools benefit from schoolwide programs, which allow those schools to use funds on programs that meet their particular needs. As part of its strategy, the Vermont Department of Education has encouraged small Title I schools to consider opting to enact schoolwide programs even in cases where the student poverty rate is below 40%.

The State also reported that it had granted one new waiver of ESEA section 1113(c)(2)(A), which requires that an LEA serving any school attendance areas or schools with a poverty rate below 35 percent allocate to all its participating schools an amount for each low-income child that is at least 125 percent of the LEA's allocation per low-income child (based on the poverty measure the LEA selects to identify eligible attendance areas or schools). Here, an LEA had four Title I schools, one of which was larger than the other three schools combined. The large Title I school had the lowest poverty rate (34 percent) but, due to its size, had the largest number of students from low-income families. The 125 percent rule would have required that the three smaller schools receive 25 percent more Title I funds per pupil before the large school received Title I funds; such an allocation was not ideal in this instance because the large school had more students from low-income families than the other three schools combined, yet would have received far smaller amounts of Title I funds per pupil. The waiver of section 1113(c)(2)(A) allowed the LEA to allocate fewer funds to the smaller schools. The resulting increase in Title I funds per pupil at the large school allowed it to better serve its large number of students from low-income families.

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 125 percent rule (ESEA section 1113(c)(2)(A)): granted to one LEA, affecting six schools.
- Title I schoolwide eligibility waivers (ESEA section 1114(a)(1)): granted to four LEAs, affecting 10 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 that 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 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 providing 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 a 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. 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 it.

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 on the characteristic of serving low income families. 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, to try new strategies (such as after-school programs) for improving educational outcomes for academically at-risk students such as through after-school programs, and to allocate funds to a school that was in great need of Title I funds. Finally, several States found Ed-Flex authority an invaluable tool in leveraging ARRA funds. Delaware and Kansas each used waivers of section 1114(a)(1) to make Title I ARRA funds available to more individual schools than otherwise would have been possible; North Carolina waived the Tydings Amendment for its EETT funds under ARRA to use those funds over a longer period, lessening the financial impact on the State when the period of availability of ARRA funds ends.

States reported conducting monitoring of all Federal programs, including those affected by 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 2009–10

State	Requirement Waived	New Waivers	Extension Waivers	Ongoing Waivers	Total Schools Affected
Colorado	Title I poverty threshold for consolidation (Section 1114(a)(1))	5	0	3	10
Delaware	Title I poverty threshold for consolidation (Section 1114(a)(1))	6	0	8	22
	Title I limit on carryover funds (Section 1127(a))	4	0	0	22
Kansas	Title I poverty threshold for consolidation (Section 1114(a)(1))	3	0	0	4
	Title I carry-over funds 3 year limitation (Section 1127(b))	1	0	0	1
Maryland	N/A	0	0	0	0
Massachusetts	Title I poverty requirement (Section 1113(a)(2)(B))	7	0	0	8
	Title I poverty threshold for consolidation (Section 1114(a)(1))	3	0	2	5
North Carolina	Title I poverty threshold for consolidation (Section 1114(a)(1))	10	0	2	15
	Title I limit on carryover funds (Section 1127)	1	0	0	All schools
	Tydings Amendments for EETT programs	3	0	0	All schools
Oregon	N/A	0	0	0	0
Pennsylvania	Title I school eligibility (Section 1113(a)(2)(B))	18	1	6	31
	Title I within-district allocations (Section 1113(c)(1))	0	0	1	266
	Title I poverty threshold for consolidation (Section 1114(a)(1))	20	0	2	29
Texas	Title I within-district allocations (Section 1113(c)(1))	0	2	1	92
	Title I poverty threshold for consolidation (Section 1114(a)(1))	16	0	42	100
	Title I carry-over funds 3 year limitation (Section 1127(b))	6	0	0	44
	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))	4	0	4	19
	Title I 125 percent rule (Section 1113(c)(2)(A))	1	0	0	6
TOTAL		108	3	74	