

DEPARTMENT OF EDUCATION**Education Flexibility Partnership Demonstration Program**

AGENCY: Department of Education.

ACTION: Notice inviting applications under the Education Flexibility Partnership Demonstration Program.

SUMMARY: The Secretary invites applications from State educational agencies (SEAs) under the Education Flexibility Partnership Demonstration program (Ed-Flex program), which is authorized by section 311(e) of the Goals 2000: Educate America Act (Pub. L. 103-227) (the Act). To help foster comprehensive education improvement in a State, the Secretary will grant up to six SEAs with approved Goals 2000 State improvement plans the authority to waive certain Federal statutory or regulatory requirements for the SEA, or for any local educational agency (LEA) or school within the State. SEAs desiring to participate in the Ed-Flex program must submit to the Secretary an application that meets the requirements of Section 311(e) of the Act.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS:

There is no specific deadline for transmittal of applications. However, because the Secretary is authorized to grant Ed-Flex status to only a limited number of States, SEAs are encouraged to submit their Ed-Flex applications as soon as possible. The Secretary will review applications as they are received in accordance with the criteria set forth in the Act.

ADDRESSES: Applications should be sent to Richard W. Riley, Secretary, U.S. Department of Education, Education Flexibility Partnership Demonstration Program, 600 Independence Avenue, S.W., Room 6300, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Thomas W. Fagan, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202-2110. Telephone: (202) 401-0039.

SUPPLEMENTARY INFORMATION: The Ed-Flex program is an educational flexibility demonstration program under which the Secretary may grant up to six SEAs the authority to waive certain Federal statutory or regulatory requirements applicable to one or more of the following programs or Acts:

(1) Title I of the Elementary and Secondary Education Act of 1965 (ESEA)—Helping Disadvantaged Children Meet High Standards.

(2) Title II of the ESEA—Eisenhower Professional Development.

(3) Title IV of the ESEA—Safe and Drug-Free Schools and Communities.

(4) Title VI of the ESEA—Innovative Education Program Strategies.

(5) Part C of Title VII of the ESEA—Emergency Immigrant Education.

(6) the Carl D. Perkins Vocational and Applied Technology Education Act.¹

The waiver authority is intended to assist SEAs and affected LEAs and schools in implementing State and local school improvement plans designed to help all children reach challenging academic standards.

To be eligible to apply under the Ed-Flex program, an SEA must serve an "eligible State." Section 311(e)(3) of the Act defines an "eligible State" as one that: (1) Has developed a State improvement plan under Goals 2000 that is approved by the Secretary; and (2) waives State statutory or regulatory requirements relating to education, while holding LEAs or schools within the State that are affected by the waivers accountable for the performance of their students.

The Secretary will select for participation in the Ed-Flex program three States with a population of 3,500,000 or greater, and three States with a population of less than 3,500,000, as determined by the 1990 decennial census. For the purpose of this program, section 3(a)(14) of the Act defines "State" to include the 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia.

Application Requirements and Criteria*I. When May an SEA Submit Its Ed-Flex Application?*

An SEA serving an "eligible State" may submit its application at any time. The Secretary is prepared to review Ed-Flex applications as soon as they are received and to grant Ed-Flex waiver authority to an SEA whose application demonstrates a substantial promise of assisting the SEA and affected LEAs and schools in the State in carrying out comprehensive education reform and otherwise meeting the purposes of the Goals 2000: Educate America Act. An

¹ The recently enacted Improving America's Schools Act of 1994 (P.L. 103-382) contains conforming amendments that were intended to replace the program references in the Goals 2000 legislation with the appropriate references in the reauthorized ESEA. However, in a technical drafting error, certain provisions of the ESEA bill were reorganized after the conforming amendments were drafted, without corresponding changes to the conforming amendments. The references above refer to the programs for which Congress intended waivers to be authorized.

SEA that serves an "eligible State" and desires to participate in the program is encouraged to submit its Ed-Flex application as soon as possible because only six applicants may receive the Secretary's delegated waiver authority.

II. What Information Should Be Included in an SEA's Ed-Flex Application?

To be considered for participation in the Ed-Flex program, an SEA must serve an "eligible State" and submit to the Secretary an application demonstrating that the State has adopted an educational flexibility (Ed-Flex) plan that meets the requirements of section 311(e)(4) of the Act. Specifically, the Ed-Flex plan must: (1) Describe the process the SEA will use to evaluate applications from LEAs or schools requesting waivers of Federal statutory or regulatory requirements for covered programs, as well as State statutory or regulatory requirements relating to education; and (2) describe in detail the State statutory and regulatory requirements relating to education that the SEA will waive. An applicant must have the legal authority to grant waivers of the State requirements that it proposes to waive and agree to grant these waivers when it is appropriate to do so.

The Ed-Flex waiver authority is designed to facilitate a State's systemic reform efforts by giving the SEA the authority to waive certain Federal requirements that impede the ability of the SEA, or any LEA or school within the State, from carrying out State or local improvement plans developed under Title III of Goals 2000. Therefore, the Ed-Flex plan should be integrated with the State's improvement plan under Goals 2000. When developing its Ed-Flex plan, an SEA is encouraged to consult with the State panel that developed the State's Goals 2000 State improvement plan. An SEA that obtains approval of a pre-existing plan under section 306(q) of the Act is encouraged to consult with those responsible for developing the pre-existing plan.

III. What Criteria Will Be Used by the Secretary To Evaluate Ed-Flex Applications?

In accordance with section 311(e)(4)(B) of the Act, the Secretary will approve an Ed-Flex application only if he determines that the application demonstrates substantial promise of assisting the SEA and affected LEAs and schools within the State in carrying out comprehensive reform and meeting the purposes of the Act. Section 311(e)(4)(B) also provides that the Secretary will consider the

following criteria in evaluating Ed-Flex partnership applications: (1) The comprehensiveness and quality of the State's Ed-Flex plan; (2) the ability of the plan to ensure accountability for the activities and goals described in the plan; (3) the significance of the State statutory or regulatory requirements relating to education that the State will waive; and (4) the quality of the SEA's process for approving applications for waivers of the covered Federal statutory or regulatory requirements and for monitoring and evaluating the results of the waivers. As stated previously, to be eligible to apply, an SEA must serve an "eligible State"—that is, a State that (1) has developed a State improvement plan under Goals 2000 that is approved by the Secretary; and (2) waives State statutory or regulatory requirements relating to education, while holding LEAs or schools within the State that are affected by the waivers accountable for the performance of their students.

In preparing applications that address these statutory criteria, SEAs are encouraged to examine carefully the following questions:

- Did the SEA conduct effective public hearings or provide other means for broad-based public involvement in the development of the Ed-Flex plan? How has the SEA involved LEAs, schools, parents, community groups, and advocacy and civil rights groups in the development of the plan? Is there widespread commitment within the State for the Ed-Flex plan?
- To what extent would the Ed-Flex plan enhance the State's ability to carry out its Goals 2000 State improvement plan? How would waivers under the Ed-Flex plan reduce or eliminate barriers to the reform of teaching and learning and assist all children in reaching challenging academic standards? Has the State demonstrated that it would extend to LEAs and schools, to the greatest extent possible, the flexibility provided under the Ed-Flex program to help foster local systemic reform efforts?
- What is the likelihood that the SEA's process for granting waivers of Federal requirements to LEAs and schools will assist them in reaching specific, measurable educational goals?
- What State statutory and regulatory requirements relating to education would be waived, and why? What is the relationship between the State and Federal requirements for which the SEA might grant waivers?
- How would the implementation of the Ed-Flex plan facilitate bottom-up reform in LEAs and schools? What LEAs, schools, and student populations would be affected by the Ed-Flex plan?

If some LEAs or schools would not be covered by the Ed-Flex plan, why not? What role would an LEA have in the waiver process if an individual school requests a waiver for the SEA?

- How would the SEA provide LEAs, parent organizations, advocacy or civil rights groups, and other interested parties in the State with notice and an opportunity to comment on proposed waivers of Federal requirements?
- How would the SEA's processes for monitoring LEAs and schools that have been granted waivers under the Ed-Flex authority and for evaluating the results of these waivers ensure that the LEAs and schools will be held accountable for the performance of all students affected by the waivers?
- To what extent do the timelines and benchmarks for implementing the Ed-Flex plan, monitoring LEAs and schools that have been granted waivers, and evaluating the results of the waivers granted provide a reasonable basis for measuring the progress of the SEA in achieving the goals of the Ed-Flex plan?

An SEA is not required to answer specifically each of these questions in its application. Rather, the questions have been provided as guidance to assist SEAs in the preparation of Ed-Flex applications that address the statutory criteria. The Secretary encourages SEAs to consider these issues or any other factors that may demonstrate that the conditions of section 311(e) of the Act have been met. There is not a particular application form that must be completed for this program.

IV. What Federal Statutory and Regulatory Requirements May an Ed-Flex Partnership State Waive?

Section 311(e)(2)(A) of the Act provides that an Ed-Flex Partnership State may waive certain statutory and regulatory requirements applicable to the following programs or Acts:

- (1) Title I of the Elementary and Secondary Education Act of 1965 (ESEA)—Helping Disadvantaged Children Meet High Standards.
 - (2) Title II of the ESEA—Eisenhower Professional Development.
 - (3) Title IV of the ESEA—Safe and Drug-Free Schools and Communities.
 - (4) Title VI of the ESEA—Innovative Education Program Strategies.
 - (5) Part C of Title VII of the ESEA—Emergency Immigrant Education.
 - (6) the Carl D. Perkins Vocational and Applied Technology Education Act.
- The Ed-Flex Partnership State will not be authorized to waive any Federal statutory or regulatory requirement of the above-referenced programs or Acts relating to: (1) Maintenance of effort; (2)

comparability of services; (3) the equitable participation of students and professional staff in private schools; (4) parental participation and involvement; and (5) the distribution of funds to States or to local educational agencies. In addition, Ed-Flex States will not be permitted to waive Federal civil rights requirements or Federal health and safety requirements.

V. What is the Duration of the Ed-Flex Waiver Authority?

The Secretary will approve an SEA's Ed-Flex waiver authority for up to five years. The period may be extended if the SEA's authority to grant waivers has been effective in enabling the State or affected LEAs or schools to carry out their reform plans. In addition, the Secretary may terminate the waiver authority at any time if he determines, after notice and opportunity for hearing, that an SEA's performance has been inadequate to justify the continuation of the waiver authority.

Paperwork Reduction Act of 1980

This notice involves information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the application requirements and selection criteria to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

SEAs are eligible to apply for the waiver authority under this program. The Department needs and uses the information in determining which States will be designated as Ed-Flex Partnership States under this program. The public reporting burden for this collection of information is estimated to average 80 hours per response for approximately 50 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10325, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Dated: January 13, 1995.

Richard W. Riley,

Secretary of Education.

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