

DEPARTMENT OF EDUCATION**Local Flexibility Demonstration Program**

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed application requirements, selection criteria, and application process.

SUMMARY: The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107-110), authorizes the Secretary of Education to enter into local flexibility demonstration agreements ("Local-Flex" agreements) with up to eighty local educational agencies (LEAs), giving them the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the ESEA in order to meet the State's definition of adequate yearly progress (AYP) and specific, measurable goals for improving student achievement and narrowing achievement gaps. (ESEA Sections 6151 through 6156)

The Secretary will select participating LEAs on a competitive basis using a peer review process. The Secretary may enter into Local-Flex agreements with no more than three LEAs in each State, and the selected LEAs must be in States that have not received State flexibility ("State-Flex") authority under Section 6141 of the ESEA. Each agreement will be for a period of five years, but that time period may be shortened or extended depending on an LEA's performance under the agreement.

In this notice, the Secretary proposes the information that an LEA would be required to submit to meet the Local-Flex application requirements, the criteria that the Department would use to select participating LEAs, and the process that the Department would follow in conducting the Local-Flex competitions.

DATES: We must receive your comments and recommendations on the application requirements, selection criteria, and application process proposed in this notice on or before March 25, 2002.

ADDRESSES: Address all comments about the application requirements, selection criteria, and application process proposed in this notice to Mr. Charles Lovett, Office of School Support and Technology Programs, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E241, Washington, DC 20202. If you prefer to send your comments by facsimile transmission,

use the following number: (202) 205-5870. If you prefer to send your comments through the Internet, use the following address:
charles.lovett@ed.gov.

If you want to comment on the information collection requirements, you must send your comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Lovett, Group Leader. Telephone: (202) 401-0039 or via Internet: *charles.lovett@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:**Invitation to Comment**

The Secretary is interested in receiving comments on the application requirements, selection criteria, and application process proposed in this notice. The Secretary is also interested in receiving comments on the length of time that applicants should be given to submit their proposals once the notice inviting applications is published in the **Federal Register.**

General

To be eligible for Local-Flex, an LEA must submit to the Department a proposed Local-Flex agreement that contains, among other things, a plan on how the LEA would consolidate and use funds received by formula under the following ESEA provisions: Subpart 2 of part A of Title II (Teacher and Principal Training and Recruiting); subpart 1 of part D of Title II (Enhancing Education Through Technology); subpart 1 of part A of Title IV (Safe and Drug-Free Schools and Communities); and subpart 1 of part A of Title V (Innovative Programs). An LEA does not receive additional Federal funding for participating in Local-Flex. Rather, it receives greater flexibility in spending funds that it receives under the referenced provisions.

The LEA must demonstrate that its proposed agreement offers substantial promise of assisting the LEA in meeting the State's definition of AYP and the LEA's specific, measurable goals. An LEA must also demonstrate that it would meet the general purposes of the programs included in the consolidation. Furthermore, participation in Local-Flex

does not relieve an LEA of its responsibility to provide equitable services for private school students and teachers under the affected programs.

I. Proposed Application Requirements

In order that the Secretary can select Local-Flex participants in accordance with section 6151 of the ESEA, the Secretary proposes that Local-Flex applicants be required to submit the following information, together with other information addressing the statutory application requirements in sections 6151(b) and (c) and the proposed selection criteria:

(a) *Baseline academic data.* Each LEA seeking to enter into a Local-Flex agreement with the Secretary would provide, as part of its proposed agreement, student achievement data for the most recent available school year, as well as descriptions of achievement trends. To the extent possible, data would be provided for both mathematics and reading or language arts, and the results would be disaggregated by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged. (These are the categories, among others, by which results had to be disaggregated under section 1111(b)(3) of the predecessor ESEA, as well as the categories by which data will be disaggregated for determining adequate yearly progress under section 1111(b)(2) of the reauthorized ESEA.)

In addition to submitting baseline achievement data that are disaggregated, to the extent possible, by the categories noted above, LEAs could also submit baseline achievement data that are further disaggregated by gender and by migrant status, or baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators would also be disaggregated.

(b) *Specific, measurable education goals.* Each applicant would submit a five-year Local-Flex plan that contains specific, measurable educational goals, with annual objectives, that the LEA would seek to achieve by consolidating and using funds in accordance with the terms of its proposed agreement. The goals would relate to raising student achievement and narrowing achievement gaps relative to the baseline achievement data and other baseline data that are submitted.

At the time an LEA submits its initial proposed Local-Flex agreement, the goals in its proposal would not have to relate to the State's definition of AYP under section 1111(b)(2) of the ESEA because those definitions are just being developed. However, as soon as its State definition of AYP is submitted to and approved by the Secretary, each LEA that has entered into a Local-Flex agreement would revise its goals, as necessary, based on that definition.

Note: State definitions of AYP under section 1111(b)(2) of the ESEA must be developed and implemented by the end of the 2002–2003 school year.

(c) *Strategies for meeting the goals.* Each applicant would propose a five-year plan that contains specific strategies for reaching its stated goals. In particular, the plan would describe how the applicant would consolidate and use funds received under subpart 2 of part A of Title II (Teacher and Principal Training and Recruitment); subpart 1 of part D of Title II (Enhancing Education Through Technology); subpart 1 of part A of Title IV (Safe and Drug-Free Schools and Communities); and subpart 1 of part A of Title V (Innovative Programs).

Once a Local-Flex LEA's State definition of AYP has been established and the LEA has modified its goals, as necessary, to reflect that definition, the LEA would be required to modify, as appropriate, the strategies that it would implement to reach its revised educational goals.

II. Proposed Selection Criteria

The Secretary proposes to use the following criteria to select the LEAs with which he will enter into Local-Flex agreements:

(a) *Identification of the Need for the Local-Flex Agreement.* The Secretary considers the LEA's description and analysis of its need for a Local-Flex agreement. In determining the quality of the description and analysis, the Secretary considers the following factors:

(i) The extent to which the LEA's baseline achievement data and data on other academic indicators are objective, valid, and reliable, and provide disaggregated results.

(ii) The extent to which the proposal identifies achievement gaps among different groups of students.

(iii) The extent to which the Local-Flex agreement will focus on serving or otherwise addressing the needs of students most at risk of educational failure.

(iv) The extent to which the additional flexibility provided under the

Local-Flex agreement would enable the LEA to meet more effectively the State's definition of adequate yearly progress and specific, measurable goals for improving student achievement and narrowing achievement gaps.

(b) *Quality of the Educational Goals.* The Secretary considers the quality of the goals that the LEA sets in its proposed Local-Flex agreement. In determining the quality of the LEA's goals, the Secretary considers the following factors:

(i) The extent to which the goals in the proposed Local-Flex agreement are clearly specified and measurable.

(ii) The significance of the improvement in student achievement and in narrowing achievement gaps proposed in the agreement.

(iii) The extent to which the goals relate to the needs identified in the LEA's baseline achievement data and data on other academic indicators.

(iv) The extent to which the goals support the intent and purposes of the Local-Flex program.

(c) *Quality of the Local-Flex Plan.* The Secretary considers the quality of the LEA's Local-Flex plan. In determining the quality of the Local-Flex plan, the Secretary considers the following factors:

(i) The extent to which the LEA will use funds consolidated under the Local-Flex agreement to address the needs identified in the baseline achievement data in order to assist the LEA in achieving its educational goals.

(ii) The extent to which the LEA's Local-Flex plan constitutes a coherent, sustained approach for reaching the LEA's goals, and to which the timelines for implementing strategies in the plan are reasonable.

(iii) The extent to which the LEA will use achievement data and data on other academic indicators to manage the proposed activities and to monitor progress toward reaching its goals on an ongoing basis.

(d) *Adequacy of the Resources.* The Secretary considers the adequacy of the resources for the proposed Local-Flex agreement. In considering the adequacy of the resources, the Secretary considers the following factors:

(i) The extent to which the funds that the LEA proposes to consolidate under the Local-Flex agreement are adequate to support the strategies in its Local-Flex plan.

(ii) The extent to which the funds that the LEA proposes to consolidate under the Local-Flex agreement will be integrated with other resources to meet the goals of the proposed agreement.

(iii) The extent to which costs that the LEA will incur under the Local-Flex

agreement are reasonable in relationship to the goals that will be achieved under the agreement.

III. Proposed Application Process

The Secretary wishes to provide as many LEAs as possible with an opportunity to apply for Local-Flex. He recognizes that some LEAs may be ready to submit a proposed Local-Flex agreement in the near future, while others may need additional time to plan sufficiently for a Local-Flex competition. In order to accommodate both groups of LEAs, the Secretary proposes to conduct two separate Local-Flex competitions.

The Department plans to publish a notice inviting applications for the first competition later this spring and to select the initial group of Local-Flex LEAs shortly thereafter. The Secretary would reserve a number of Local-Flex slots for a subsequent Local-Flex competition that would be conducted in the fall. That competition would involve new Local-Flex applicants as well as unsuccessful applicants from the first competition that may wish to apply again.

The Secretary plans to conduct the initial Local-Flex competition before the State-Flex competition because he believes that it will take States longer to develop State-Flex proposals than it will for LEAs to develop proposed Local-Flex agreements. SEAs seeking State-Flex authority must not only submit a plan that describes how they would consolidate and use certain Federal funds in order to make adequate yearly progress and advance the educational priorities of the State and affected LEAs, but must also include in their State-Flex applications proposed performance agreements that they would enter into with between four and ten LEAs (at least half of which must be "high-poverty LEAs"). It will likely be more difficult and time-consuming for an SEA to develop a State-Flex proposal in coordination with a number of LEAs than it will be for an individual LEA to develop a Local-Flex proposal.

To accommodate the needs of SEAs that are at various stages of meeting the State-Flex requirements, the Secretary intends to conduct two separate State-Flex competitions. The Secretary plans to publish a notice inviting applications for the initial State-Flex competition in late summer (after the first Local-Flex competition), and he intends to select three to four SEAs for State-Flex in that competition. A subsequent State-Flex competition for the remaining State-Flex slots (up to the maximum of seven allowed under the legislation) would be conducted later in the year.

The Secretary would coordinate the State-Flex competitions with the Local-Flex competitions. Under the legislation, the Secretary may enter into Local-Flex agreements only with LEAs in States that do not have State-Flex authority. So as not to preclude an SEA from applying for State-Flex if an LEA in the State has already entered into a Local-Flex agreement with the Secretary, the Secretary would allow such an SEA to seek State-Flex authority if it proposes to incorporate into its State-Flex proposal any Local-Flex agreements granted to LEAs in the State.

If an SEA notifies the Secretary, by May 8, 2002, that it will be applying for State-Flex, an LEA in that State is precluded by statute from applying for Local-Flex until a final determination is made concerning the SEA's State-Flex application, should one subsequently be submitted. The May 8, 2002 date is not the deadline for submission of a State-Flex application. Rather it is the final date, established in the legislation, by which an SEA may preclude LEAs in the State from applying for Local-Flex by notifying the Department that it intends to apply for State-Flex.

An SEA that chooses not to notify the Department prior to May 8, 2002 that it will be applying for State-Flex may nonetheless seek State-Flex authority once the State-Flex competition is conducted. LEAs in that State, however, would have an opportunity to seek Local-Flex before that SEA seeks State-Flex. As noted previously, an SEA would not be precluded from applying for State-Flex so long as it agrees to incorporate into its State-Flex proposal any Local-Flex agreements already entered into between the Secretary and LEAs in the State. The Department will announce more details on the State-Flex competitions in a future notice in the **Federal Register**.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3E241, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 am and 4:00 pm, Eastern time, Monday through Friday of each week, except Federal holidays.

Executive Order 12866

This notice has been reviewed in accordance with Executive Order 12866.

Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice are those associated resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits: It is not anticipated that the application requirements proposed in this notice will impose any significant costs on applicants. Since these regulations provide a basis for the Secretary to negotiate local flexibility demonstration agreements with up to 80 LEAs, giving the LEAs the flexibility to consolidate certain Federal education funds, the regulations would not impose any unfunded mandates on States or LEAs. The benefits of the program are described in the **SUMMARY** section of this notice.

Regulatory Flexibility Act Certification

The Secretary certifies that the requirements in this notice would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations would be small LEAs. Since the Secretary is only authorized to enter into agreements with up to 80 LEAs, the requirements proposed in this notice will not affect a significant number of LEAs. In addition, these requirements are minimal and are necessary to ensure effective program management.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Although we do not believe these proposed regulations would have federalism implications as defined in Executive Order 13132, we encourage State and local elected officials to review them and to provide comments.

Paperwork Reduction Act of 1995

This document contains proposed data requirements. The feedback received on these data requirements will eventually result in a new information collection and will be under the review of the Office of Management and Budget (OMB) until OMB approves the data requirements at the time of the final notice.

If you want to comment on the proposed information collection requirements, please send your comments to Mr. Charles Lovett, Office of School Support and Technology Programs, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E241, Washington, DC 20202. *Electronic Access to this Document:* You may view this document, as well as other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: www.access.gpo.gov/nara/index.html.

Program Authority: Sections 6151 through 6156 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107-110).

Dated: February 19, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

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