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# **ESEA Flexibility**

## **Frequently Asked Questions**

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Revised August 3, 2012

## TABLE OF CONTENTS: ESEA FLEXIBILITY FAQs

INTRODUCTION .....	1
<b>A. GENERAL GUIDANCE ON ESEA FLEXIBILITY .....</b>	<b>3</b>
<i>A-1. What is the purpose of this flexibility?.....</i>	<i>3</i>
<i>A-2. Under what authority is the Secretary offering this flexibility?.....</i>	<i>3</i>
<i>A-3. May an SEA request only a portion of this flexibility?.....</i>	<i>3</i>
<i>A-4. Through its request for this flexibility, may an SEA request a waiver of additional ESEA requirements that are not specifically included in this flexibility?.....</i>	<i>3</i>
<i>A-5. Does an LEA need to request a waiver in order to take advantage of this flexibility? .....</i>	<i>4</i>
<i>A-5a. When may an SEA request ESEA flexibility? .....</i>	<i>4</i>
<i>A-6. What will be the duration of the waivers granted as part of this flexibility? .....</i>	<i>4</i>
<i>A-7. May the Secretary terminate the waivers granted to an SEA through this flexibility before the end of the 2013–2014 school year for an SEA that receives the flexibility in Window 1 or Window 2 or before the end of the 2014–2015 school year for an SEA that receives the flexibility in Window 3?.....</i>	<i>4</i>
<i>A-8. By when must an SEA or LEA meet the principles of this flexibility, and how early may an SEA or LEA begin to take advantage of the waivers?.....</i>	<i>5</i>
<i>A-9. How do the waivers included in this flexibility affect other waivers an SEA or LEA might already have received from the Department? .....</i>	<i>6</i>
<i>A-10. Does an SEA or LEA have to comply with accountability provisions that are not specifically waived under this flexibility?.....</i>	<i>6</i>
<i>A-10a. How does ESEA flexibility affect public charter school LEAs and public charter schools?.....</i>	<i>6</i>
<i>A-10b. Which entity in a State is responsible for ensuring that a charter school LEA or charter school complies with a State’s differentiated recognition, accountability, and support system? .....</i>	<i>7</i>
<i>A-10c. Is a charter school that is its own LEA included in an SEA’s differentiated recognition, accountability, and support system as an LEA or as a school? .....</i>	<i>8</i>
<i>A-10d. May a charter authorizer impose more rigorous accountability requirements on a charter school than an SEA’s differentiated recognition, accountability, and support system would otherwise require? .....</i>	<i>8</i>
<i>A-11. Does the flexibility afforded by this flexibility affect an SEA’s or LEA’s responsibility to comply with civil rights laws?.....</i>	<i>8</i>
<i>A-12. Does this flexibility affect the rights of a student with a disability to a free appropriate public education (FAPE) in accordance with the student’s individualized education program (IEP) as required by Part B of the Individuals with Disabilities Education Act (IDEA) or FAPE as required by Section 504 of the Rehabilitation Act of 1973 (Section 504)? .....</i>	<i>8</i>

<i>A-13. Are there specific provisions in this flexibility that address SEA and LEA responsibilities with respect to serving English Learners?</i> .....	9
<i>A-14. What if an SEA was not able to request ESEA flexibility in Window 1 or Window 2 because it needed additional time to plan for implementation of this flexibility?</i> .....	9
<i>A-15. Does this flexibility affect the parental involvement requirements under ESEA section 1118?</i> .....	10
<i>A-16. What is the role of parents and the broader community in developing a request for, and then implementing, ESEA flexibility?</i> .....	10
<i>A-17. May the Secretary waive the requirements for an LEA to provide for the equitable participation of private school students and teachers?</i> .....	10
<i>A-18. Do the supplement not supplant requirements of Title I, Part A apply if an LEA uses Title I, Part A funds to implement an SEA’s ESEA flexibility request?</i> .....	10
<i>A-19. May an LEA use Title I, Part A funds to implement activities in an SEA’s ESEA flexibility request that apply to all students or teachers in the State?</i> .....	13
<b>B. GUIDANCE REGARDING WAIVERS IN ESEA FLEXIBILITY</b> .....	<b>15</b>
<b><i>Timeline for 100 Percent Proficiency</i></b> .....	<b>15</b>
<i>B-1. What does this flexibility permit with respect to the timeline for ensuring 100 percent proficiency by the end of the 2013–2014 school year?</i> .....	15
<i>B-2. When may an SEA reset its AMOs?</i> .....	15
<i>B-3. How may an SEA reset its AMOs to take advantage of this waiver?</i> .....	15
<i>B-4. How does an SEA calculate new AMOs under option A (reducing by half the percentage of students in the “all students” group and in each subgroup who are not proficient within six years)?</i> .....	16
<i>B-5. How does an SEA calculate new AMOs under option B (extending the length of the timeline to no later than the 2019–2020 school year)?</i> .....	16
<i>B-6. What are the requirements for an SEA that chooses option C to reset its AMOs (using another method that is educationally sound and results in ambitious but achievable AMOs for all schools and all subgroups)?</i> .....	17
<i>B-7. Must an SEA’s revised AMOs be the same for all schools in the State?</i> .....	17
<i>B-8. Deleted February 10, 2012</i> .....	17
<b><i>School Improvement Requirements</i></b> .....	<b>17</b>
<i>B-9. What provisions of ESEA section 1116 pertaining to the identification of a school for improvement, corrective action, or restructuring are included in this flexibility?</i> .....	17

B-10.	<i>May an LEA spend the funds that it otherwise would be obligated to spend for choice-related transportation and SES or for professional development on any allowable activity that is designed to improve student achievement?.....</i>	18
B-10a.	<i>Are the Title I, Part A funds that an LEA would otherwise spend for choice-related transportation and SES or for professional development in LEAs identified for improvement subject to the requirements to provide equitable services to eligible private school children, their teachers, and their families? .....</i>	18
B-10b.	<i>Must an LEA consult with private school officials prior to deciding how to use Title I, Part A funds that may be freed up if the LEA is no longer required to meet the requirements in ESEA section 1116?....</i>	19
B-10c.	<i>Question A-8 indicates that an LEA may choose not to implement a waiver of an LEA-level requirement, such as the requirement to provide SES or the requirement to provide public school choice. Given that under ESEA flexibility schools are no longer identified for improvement, corrective action, or restructuring, how might an LEA that wants to offer choice and SES (by not implementing the waiver of these federal requirements) do so? .....</i>	19
B-11.	<i>Does an SEA have flexibility with respect to whether it and its LEAs will make AYP determinations under ESEA flexibility?.....</i>	20
B-11a.	<i>Do the limits on how an SEA may include the proficient and advanced scores of students with disabilities who take an alternate assessment based on alternate or modified academic achievement standards still apply under this flexibility? .....</i>	23
	<b><i>LEA Improvement Requirements.....</i></b>	23
B-12.	<i>What provisions of ESEA section 1116 regarding identification of an LEA for improvement or corrective action are covered by this flexibility?.....</i>	23
B-12a.	<i>May an LEA continue to take advantage of the authority in ESEA section 1116(c)(7)(A)(iii) that allows an LEA identified for improvement to spend the Title I, Part A funds it must reserve for professional development to meet the needs of any of the LEA’s instructional staff? .....</i>	24
B-13.	<i>Deleted February 10, 2012 .....</i>	24
B-14.	<i>What does this flexibility include with respect to rural LEAs?.....</i>	24
	<b><i>State-Level Reservation for School Improvement.....</i></b>	25
B-15.	<i>How does this flexibility affect how an SEA allocates funds it reserves under ESEA section 1003(a)?</i>	25
	<i>Use of State-Reserved Title I, Part A Funds for Reward Schools .....</i>	25
B-16.	<i>Does this flexibility permit an SEA to use Title I, Part A funds it reserves from the State’s Title I, Part A allocation for monetary rewards to reward schools? .....</i>	25

<b><i>Poverty Threshold for Schoolwide Programs</i></b> .....	25
B-17. <i>Why might an LEA need a waiver of the poverty threshold to operate a schoolwide program in particular schools?</i> .....	25
<b><i>Highly Qualified Teacher Improvement Plan Requirements</i></b> .....	26
B-18. <i>What does this flexibility include with respect to the highly qualified teacher requirements under Title II, Part A and Title I, Part A of the ESEA?</i> .....	26
<b><i>Transferability of Funds</i></b> .....	27
B-19. <i>How does this flexibility affect the ability of SEAs and LEAs to transfer funds from one eligible program to another?</i> .....	27
B-20. <i>Does this flexibility permit an SEA or LEA to transfer funds out of Title I, Part A or out of programs not covered under ESEA section 6123?</i> .....	28
B-21. <i>In transferring funds, must an SEA or LEA comply with the notice requirements in ESEA section 6123(d)?</i> .....	28
B-22. <i>What are the responsibilities of an SEA or LEA for the provision of equitable services to private school children and teachers with respect to funds being transferred?</i> .....	28
B-22a. <i>Are there any limitations on an LEA’s ability to transfer 100 percent of its Title II, Part A Improving Teacher Quality State Grant funds into another authorized program?</i> .....	28
<b><i>School Improvement Grants</i></b> .....	29
B-23. <i>What does the flexibility allow with respect to SIG funds?</i> .....	29
<b><i>Expanded Learning Time</i></b> .....	29
B-24a. <i>How does ESEA flexibility affect the 21st CCLC program?</i> .....	30
B-24b. <i>When would ESEA flexibility for 21st CCLC funds take effect?</i> .....	30
B-24c. <i>What are some examples of ways an eligible entity might use 21st CCLC funds to provide activities that support expanded learning time?</i> .....	30
B-24d. <i>Does the 21st CCLC supplement, not supplant provision apply to the use of 21st CCLC funds to support expanded learning time under ESEA flexibility?</i> .....	31
B-25. <i>What does high-quality expanded learning time look like?</i> .....	31
<b>C. GUIDANCE REGARDING PRINCIPLES IN ESEA FLEXIBILITY</b> .....	32

<b><i>SEA Adopts and Implements College- and Career-Ready Standards and Aligned Assessments</i></b> .....	32
C-1. <i>To receive this flexibility, what must an SEA do with respect to adopting college- and career-ready standards?</i> .....	32
C-2. <i>What evidence must an SEA submit to demonstrate that its proposed standards are college- and career-ready?</i> .....	32
C-3. <i>If an SEA is adopting college- and career-ready standards consistent with part two of the definition, how might the SEA involve external stakeholders in the process?</i> .....	32
C-4. <i>When an SEA adopts college- and career-ready standards, to which LEAs must those standards apply?</i> .....	33
C-5. <i>To receive this flexibility, what must an SEA do with respect to implementing college- and career-ready standards?</i> .....	33
C-6. <i>What is an SEA’s plan to implement college- and career-ready standards likely to include?</i> .....	33
C-6a. <i>As part of its plan to transition to and implement college- and career-ready standards, may an SEA include activities related to improving alignment of preschool standards with its college- and career-ready standards?</i> .....	34
C-7. <i>How might an SEA use its current assessments prior to the implementation of college- and career-ready assessments to support the transition to college- and career-ready standards for students and teachers?</i> .....	34
C-8. <i>By when does an SEA need to implement college- and career-ready standards?</i> .....	35
C-9. <i>To receive this flexibility, what must an SEA do with respect to assessing students based on college- and career-ready standards?</i> .....	35
C-10. <i>Must an SEA developing and implementing high-quality assessments ensure that accommodations will be provided to students with disabilities and English Learners?</i> .....	35
C-11. <i>How may an SEA demonstrate that it will assess students based on college- and career-ready standards?</i> .....	35
C-12. <i>Must an SEA’s high-quality assessments aligned with college- and career-ready standards be approved by the Department?</i> .....	36
C-13. <i>To receive this flexibility, once an SEA has adopted high-quality assessments, it must take into account student growth in its differentiated recognition, accountability, and support system. What factors does the Department anticipate taking into account when it reviews growth targets for students?</i> .....	36
C-14. <i>To receive this flexibility, what must an SEA do with respect to ELP standards and assessments?</i> .....	36
C-15. <i>How are alternate assessments for students with disabilities included in an SEA’s high-quality assessments?</i> .....	37
C-16. <i>How can an SEA report college-going and college credit-accumulation rates for each high school in the State?</i> .....	37

<b><i>State-Developed Differentiated Recognition, Accountability, and Support System</i></b> .....	38
<i>C-17. What are an SEA’s responsibilities with regard to providing differentiated recognition, accountability, and support?</i> .....	38
<i>C-18. In addition to meeting the requirements related to priority and focus schools, how might an SEA identify additional Title I schools with specific needs for academic support and improvement?</i> .....	38
<i>C-19. May an SEA include assessments in subjects other than reading / language arts and mathematics as part of its differentiated recognition, accountability, and support system?</i> .....	39
<i>C-20. What accountability information must an SEA and its LEAs include on their report cards?</i> .....	39
<i>C-21. May an SEA incorporate its existing State accountability system into its comprehensive plan for implementing this flexibility?</i> .....	39
<i>C-22. What schools must an SEA identify as part of its differentiated recognition, accountability, and support system under this flexibility?</i> .....	40
<i>C-23. For purposes of this flexibility, from among which pool of schools must an SEA identify reward schools, priority schools, and focus schools?</i> .....	40
<i>C-23a. How might an SEA ensure that schools from across all grade spans are fairly represented in its lists of reward schools, priority schools, and focus schools?</i> .....	40
<i>C-23b. May an SEA identify the same school as both a priority school and a focus school?</i> .....	40
<i>C-23c. Principle 2 requires an SEA to identify a number of schools equal to five percent of the State’s Title I schools as priority schools and a number of schools equal to 10 percent of the State’s Title I schools as focus schools. Do these numbers represent the exact number of schools that must be identified or are they the minimum number of schools that must be identified?</i> .....	40
<i>C-23d. May Title I, Part A funds be used in a Title I-eligible high school that has had a graduation rate less than 60 percent over a number of years?</i> .....	41
<i>C-23e. May an SEA include non-Title I-participating schools in its differentiated recognition, accountability, and support system?</i> .....	41
<i>C-24. May an SEA use the results of assessments in subjects other than reading/ language arts and mathematics to identify reward schools, priority schools, and focus schools?</i> .....	41
<i>C-25. Must an SEA identify its reward schools, priority schools, and focus schools prior to requesting this flexibility?</i> .....	42
<i>C-25a. How can an SEA meet the requirement to submit its lists of reward, priority, and focus schools as part of its request for flexibility?</i> .....	42
<i>C-25b. May an SEA update its lists of reward, priority, and focus schools during the period of the flexibility in order to use more recent achievement data?</i> .....	42
<i>C-25c. If an SEA updates its lists of priority and focus schools during the waiver period, should its revised lists reflect any changes in the number of Title I-participating schools served by its LEAs?</i> .....	43

C-26.	<i>How does an SEA determine the number of schools that must be identified as priority schools? .....</i>	<i>43</i>
C-26a.	<i>How does an SEA identify priority schools for the purpose of this flexibility? .....</i>	<i>44</i>
C-27.	<i>Are the priority schools that an SEA must identify under this flexibility the same as the persistently lowest-achieving (PLA) schools that the SEA identified for the purpose of the SIG program? .....</i>	<i>45</i>
C-28.	<i>How may an LEA implement interventions aligned with the turnaround principles in a priority school that is operating a targeted assistance program or other interventions in a focus school that is operating a targeted assistance program? .....</i>	<i>45</i>
C-29.	<i>Must an SEA publicly report its lists of reward schools, priority schools, and focus schools? .....</i>	<i>45</i>
C-30.	<i>How should an SEA provide public notice regarding a school's identification as a reward, priority, or focus school? .....</i>	<i>45</i>
C-31.	<i>Must an SEA provide rewards to all reward schools? .....</i>	<i>46</i>
C-32.	<i>What are examples of the ways in which an SEA may recognize or reward schools? .....</i>	<i>46</i>
C-33.	<i>When must an SEA begin providing recognition and, if it chooses, rewards to reward schools? .....</i>	<i>46</i>
C-34.	<i>What interventions must an LEA implement in its priority schools? .....</i>	<i>46</i>
C-34a.	<i>May an SEA incorporate activities to strengthen or expand access to early learning programs as part of implementing interventions that meet the turnaround principles in priority schools? .....</i>	<i>47</i>
C-35.	<i>How may an LEA's interventions in priority schools meet the turnaround principle regarding redesigning the school day, week, or year to include additional time for student learning and teacher collaboration? ...</i>	<i>47</i>
C-36.	<i>How may an LEA's interventions in priority schools meet the turnaround principle regarding using data to inform instruction and for continuous improvement? .....</i>	<i>47</i>
C-37.	<i>How may an LEA's interventions in priority schools meet the turnaround principle regarding ongoing mechanisms for family and community engagement? .....</i>	<i>47</i>
C-38.	<i>How may an LEA's interventions in priority schools meet the turnaround principle regarding establishing a school environment that improves school safety and discipline and addressing other non-academic factors that impact student achievement, such as students' social, emotional, and health needs? .....</i>	<i>48</i>
C-39.	<i>Must an LEA implement one of the four SIG models in a school receiving SIG funds? .....</i>	<i>48</i>
C-40.	<i>By when must an LEA begin implementing interventions aligned with the turnaround principles in each of its priority schools? .....</i>	<i>48</i>
C-41.	<i>How might an SEA develop its timeline to ensure that LEAs with priority schools implement interventions aligned with the turnaround principles? .....</i>	<i>48</i>
C-42.	<i>What funds are available to support implementation of interventions aligned with the turnaround principles in each priority school? .....</i>	<i>49</i>
C-43.	<i>How does implementation of this flexibility interact with an SEA's or LEA's implementation of the SIG program? .....</i>	<i>49</i>

<i>C-44. Must a priority school that exits priority status by making significant progress in improving student achievement consistent with the SEA’s criteria still implement interventions aligned with the turnaround principles?.....</i>	<i>49</i>
<i>C-45. Are there particular interventions that an LEA must implement in its focus schools? .....</i>	<i>49</i>
<i>C-46. When must an LEA begin implementing interventions in its focus schools? .....</i>	<i>50</i>
<i>C-47. What funds are available to support the implementation of interventions in an LEA’s focus schools? .....</i>	<i>50</i>
<i>C-48. How should an LEA take into account the needs of subgroups, in particular the needs of English Learners and students with disabilities, when implementing interventions in a focus school? .....</i>	<i>50</i>
<i>C-48a. How can an SEA ensure that its LEAs implement interventions in focus schools in a manner that meets the requirements of ESEA flexibility and civil rights laws? .....</i>	<i>50</i>
<i>C-49. How might an SEA ensure appropriate selection of external providers to support the full and effective implementation of required interventions in priority and focus schools?.....</i>	<i>51</i>
<i>C-50. How may an SEA use its school improvement reservation under ESEA section 1003(a) to support an LEA’s implementation of appropriate interventions in priority and focus schools?.....</i>	<i>51</i>
<b><i>Supporting Effective Instruction and Leadership.....</i></b>	<b><i>51</i></b>
<i>C-51. What does this flexibility require regarding teacher and principal evaluation and support systems? .....</i>	<i>51</i>
<i>C-52. How may an SEA and its LEAs define performance levels that take into account multiple valid measures for teacher and principal evaluation and support systems? .....</i>	<i>52</i>
<i>C-53. What are an SEA’s responsibilities with regard to ensuring that an LEA’s evaluation and support systems consider student growth? .....</i>	<i>52</i>
<i>C-54. What are examples of other valid measures of professional practice an SEA might use to determine performance levels for teacher and principal evaluation and support systems?.....</i>	<i>53</i>
<i>C-55. May an SEA require an LEA to include specific measures of professional practice in addition to student growth in its evaluation and support systems?.....</i>	<i>53</i>
<i>C-56. What frequency of evaluation constitutes “regularly” evaluating educators?.....</i>	<i>54</i>
<i>C-57. How might an SEA and its LEAs use evaluation and support systems to improve teacher and principal effectiveness?.....</i>	<i>54</i>
<i>C-58. Must an SEA have developed and adopted the guidelines for teacher and principal evaluation and support systems by the time it requests this flexibility?.....</i>	<i>55</i>
<i>C-59. What is the deadline for an LEA to implement teacher and principal evaluation and support systems that meet the principles of this flexibility?.....</i>	<i>55</i>

<i>C-60. To what timelines for developing and implementing teacher and principal evaluation and support systems will an LEA that is also participating in other Department programs (i.e., Race to the Top, Teacher Incentive Fund, SIG) in addition to this flexibility be held accountable? .....</i>	<i>56</i>
<i>C-61. What resources are available to SEAs and LEAs to help them develop, adopt, and implement teacher and principal evaluation and support systems that meet principle 3 of this flexibility? .....</i>	<i>56</i>
<b><i>Burden Reduction</i>.....</b>	<b><i>58</i></b>
<i>C-62. To receive this flexibility, what must an SEA do with respect to burden reduction?.....</i>	<i>58</i>
<i>C-63. What might an SEA do to reduce burden?.....</i>	<i>58</i>
<b>D. GUIDANCE FOR SEAS REQUESTING ESEA FLEXIBILITY .....</b>	<b>59</b>
<i>D-1. Is each SEA eligible to request this flexibility? .....</i>	<i>59</i>
<i>D-2. Must an SEA solicit input on its request from appropriate stakeholders?.....</i>	<i>59</i>
<i>D-3. Must an SEA consult with its Committee of Practitioners? .....</i>	<i>59</i>
<i>D-4. What if an SEA must secure a change in State law or policy in order to implement one of the principles of this flexibility? .....</i>	<i>59</i>
<i>D-5. In reviewing and approving an SEA’s request for this flexibility, are there other factors the Department may take into account?.....</i>	<i>60</i>
<b>E. GUIDANCE FOR LEAS.....</b>	<b>61</b>
<i>E-1. May an LEA independently request this flexibility if its SEA does not request this flexibility? .....</i>	<i>61</i>
<i>E-2. What flexibility and other benefits would an LEA gain through this flexibility? .....</i>	<i>61</i>
<i>E-3. What responsibilities would an LEA have under this flexibility?.....</i>	<i>62</i>
<i>E-4. Must an LEA comply with State and local laws, regulations, and policies, including collective bargaining agreements?.....</i>	<i>63</i>
<b>APPENDIX A.....</b>	<b>64</b>
<b>APPENDIX B .....</b>	<b>67</b>
<b>APPENDIX C .....</b>	<b>69</b>

## INTRODUCTION

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On September 23, 2011, the U.S. Department of Education (Department) offered each interested State educational agency (SEA) the opportunity to request flexibility on behalf of itself, its local educational agencies (LEAs), and its schools, in order to better focus on improving student learning and increasing the quality of instruction. This voluntary opportunity is providing educators and State and local leaders with flexibility regarding specific requirements of the No Child Left Behind Act of 2001 (NCLB), in exchange for rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. This flexibility builds on and supports the significant State and local reform efforts already underway in critical areas such as transitioning to college- and career-ready standards and assessments; developing systems of differentiated recognition, accountability, and support; and evaluating and supporting teacher and principal effectiveness.

To support an SEA in developing a request for ESEA flexibility and in implementing that request once it is approved, the Department has prepared this guidance, which provides additional information regarding the waivers available through this flexibility, the principles that the SEA and its LEAs must meet to receive the waivers, and other information that may be relevant to the SEA and its LEAs in implementing this flexibility. The Department has also prepared a document titled *ESEA Flexibility Review Guidance* that provides details for SEAs about the review process and the criteria that will be used to evaluate each request for this flexibility, including questions to guide reviewers as they evaluate each request and the specific information that a request must include to qualify for this flexibility. The Department encourages an interested SEA to consider this review guidance as it develops its request.

### **SUMMARY OF CHANGES SINCE OCTOBER 3, 2011**

This guidance was originally published on October 3, 2011. On November 10, 2011, January 5, 2012, February 10, 2012, and May 7, 2012, the Department issued additional guidance as addenda to the October 3 guidance. This document incorporates the guidance in these addenda as the following questions: A-8, A-10a, A-10b, A-10c, A-10d, A-15, A-16, A-17, B-10a, B-10b, B-11, B-11a, B-22a, B-24, B-24a, B-24b, B-24c, B-24d, C-6a, C-23a, C-23b, C-23c, C-23d, C-23e, C-25a, C-25b, C-25c, C-26a, and C-34a.

In addition, the following questions, some of which were originally published in addenda as noted above, have been modified to reflect the applicable timelines for an SEA that requested ESEA flexibility in “Window 1” (*i.e.*, in November 2011) or “Window 2” (*i.e.*, in February 2012) as compared to the applicable timelines for an SEA that requests ESEA flexibility in “Window 3” (*i.e.*, in September 2012): A-6, A-7, A-8, A-14, B-2, B-4, B-5, C-25a, C-25b, C-26, C-33, C-41, C-46, C-51, C-57, C-58 and C-59.

This document also includes the following new questions: A-5a, A-18, A-19, B-10c, B-12a, and C-48a; and modifies A-13, B-15, C-50, and E-2.

The following questions that were included in the October 3 guidance have been deleted from this version of the guidance: B-8 and B-13.

If you are interested in commenting on this guidance, please e-mail us your comments at [ESEflexibility@ed.gov](mailto:ESEflexibility@ed.gov) using the subject line “Flexibility Guidance” or write to us at the following address:

U.S. Department of Education  
Office of Elementary and Secondary Education  
Student Achievement and School Accountability Programs  
400 Maryland Ave, SW  
Washington, DC 20202

## **A. GENERAL GUIDANCE ON ESEA FLEXIBILITY**

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This section provides general guidance on this flexibility. The document titled *ESEA Flexibility* contains definitions for the following terms used in this section: (1) college- and career-ready standards; (2) focus school; (3) high-quality assessment; and (4) priority school.

### **A-1. What is the purpose of this flexibility?**

Over the past few years, SEAs and LEAs have initiated groundbreaking reforms and innovations to increase the quality of instruction and improve academic achievement for all students. Many of these innovations and reforms, however, were not anticipated when the ESEA was reauthorized by NCLB. Although NCLB helped SEAs and LEAs shine a bright light on the achievement gap and increased accountability for student subgroups, it inadvertently encouraged some States to set low academic standards, failed to recognize or reward growth in student achievement, and did little to elevate the teaching profession or recognize the most effective teachers. Instead of fostering progress and accelerating academic improvement, many ESEA requirements have unintentionally become barriers to State and local implementation of forward-looking reforms designed to raise academic achievement. Accordingly, the *ESEA Flexibility* is designed to offer flexibility with respect to specific ESEA requirements so that SEAs and LEAs can better focus on improving student learning and increasing the quality of instruction. It provides educators and State and local leaders with flexibility in exchange for rigorous State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. Of course, programs or activities an SEA or its LEAs have been implementing under the ESEA, as reauthorized by NCLB, that are increasing the quality of instruction and improving student academic achievement may be incorporated into the implementation of the principles in this flexibility.

### **A-2. Under what authority is the Secretary offering this flexibility?**

The Secretary is offering this flexibility pursuant to section 9401 of the ESEA, which allows the Secretary to waive, with certain exceptions, any statutory or regulatory requirement of the ESEA for an SEA that receives funds under a program authorized by the ESEA and requests a waiver, provided the waiver will increase the quality of instruction for students and improve the academic achievement of students.

### **A-3. May an SEA request only a portion of this flexibility?**

No. An SEA may not request a portion of this flexibility or implement only some of its principles. This flexibility is intended to build on and support the significant State and local reform efforts already underway in critical areas such as transitioning to college- and career-ready standards and aligned high-quality assessments; developing systems of differentiated recognition, accountability, and support; and evaluating and supporting teacher and principal effectiveness. Only through such comprehensive efforts can SEAs and LEAs truly increase the quality of instruction and improve student academic achievement.

### **A-4. Through its request for this flexibility, may an SEA request a waiver of additional ESEA requirements that are not specifically included in this flexibility?**

The Secretary is inviting requests only for the set of waivers specifically included in this flexibility. However, an SEA and its LEAs may continue to request waivers of additional ESEA requirements, consistent with ESEA section 9401.

**A-5. Does an LEA need to request a waiver in order to take advantage of this flexibility?**

No. An LEA need not request a waiver in order to take advantage of this flexibility. The LEA would be able to exercise the flexibility based on the Secretary's approval of its SEA's request. Similarly, each LEA in the State would need to meet the principles that are part of this flexibility, consistent with the SEA's authority to impose requirements on its LEAs under State law.

**A-5a. When may an SEA request ESEA flexibility?**

The Secretary has offered an SEA three opportunities to request ESEA flexibility. For the first opportunity — Window 1 — requests were due November 14, 2011. For the second opportunity — Window 2 — requests were due February 28, 2012. For the third opportunity — Window 3 — requests will be due September 5, 2012. (Added August 3, 2012)

**A-6. What will be the duration of the waivers granted as part of this flexibility?**

Consistent with ESEA section 9401(d)(1), the Secretary is generally granting waivers that are included in this flexibility to SEAs that requested flexibility in Window 1 or Window 2 through the end of the 2013–2014 school year. An SEA that requested flexibility in Window 1 or Window 2 may request an extension of the initial period of this flexibility prior to the start of the 2014–2015 school year unless it is superseded by reauthorization of the ESEA. The timeline for implementation that is included in the document titled *ESEA Flexibility* shows the additional actions that an SEA that requested the flexibility in Window 1 or Window 2 must plan to take in the 2014–2015 school year in order to receive an extension. In deciding whether to grant an extension, the Secretary will consider, among other relevant factors, whether the SEA and its LEAs are on track to being able to complete the activities required for the 2014–2015 school year by, for example, considering the SEA's progress to date in implementing this flexibility.

Consistent with ESEA section 9401(d)(1), the Secretary intends to grant waivers that are included in flexibility to SEAs that request the flexibility in Window 3 through the end of the 2014–2015 school year.

The Secretary will decide prior to the end of the 2014–2015 school year whether he will invite an SEA that requested ESEA flexibility in Window 1, Window 2, or Window 3 to request an additional extension of the waivers and, if so, what requirements would have to be met to receive the extension. (Modified August 3, 2012)

**A-7. May the Secretary terminate the waivers granted to an SEA through this flexibility before the end of the 2013–2014 school year for an SEA that receives the flexibility in Window 1 or Window 2 or before the end of the 2014–2015 school year for an SEA that receives the flexibility in Window 3?**

Yes. ESEA section 9401(f) requires the Secretary to terminate a waiver if the Secretary determines, after notice and an opportunity for a hearing, that the performance of the entity affected by this flexibility has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purpose. Accordingly, the Secretary may terminate the waivers granted through this flexibility if an SEA or a significant number of its LEAs do not comply with one or more of the principles. The Secretary may also terminate this flexibility if an SEA fails to meet the key milestones toward full implementation as laid out in its plans. If the waivers are terminated, the SEA and its LEAs must then comply with the requirements of current law. In addition, the Secretary may terminate the waivers granted through this flexibility if they are superseded by the reauthorization of the ESEA. (Modified August 3, 2012)

**A-8. By when must an SEA or LEA meet the principles of this flexibility, and how early may an SEA or LEA begin to take advantage of the waivers?**

The deadline by which an SEA or LEA must meet a particular principle and the time at which it may begin to take advantage of a particular waiver granted as part of this flexibility vary from principle to principle and from waiver to waiver. See the “Timelines for ‘Window 1’ and ‘Window 2’ Requests” and “Timelines for ‘Window 3’ Requests” in the document titled *ESEA Flexibility* for the deadlines for meeting each principle and implementing each waiver.

Note that the deadlines (bolded in the “Timelines” charts) for meeting a principle are the latest dates by which an SEA or LEA must meet a particular principle; an SEA or LEA always has the option of meeting the principle earlier than specified. SEAs and LEAs must, however, meet all of the principles.

On the other hand, the dates for implementing a particular waiver represent the earliest time at which an SEA or LEA may take advantage of the specified waiver. An SEA always has the option of delaying its implementation of an SEA-level waiver (*e.g.*, the waivers of ESEA sections 1111(b)(2)(E) through (H) regarding the 2013–2014 timeline for determining AYP) until a later time or not implementing the waiver altogether, so long as it continues to implement current law in the area that otherwise would be covered by the waiver. Similarly, with respect to LEA-level waivers (*e.g.*, the waiver of ESEA section of 1116(b) regarding school improvement requirements), an LEA may decide to delay implementation of a particular waiver until a later time or not implement the waiver altogether. Regardless of whether an LEA chooses to implement a particular waiver, the LEA must still meet all of the principles of this flexibility. Additionally, an SEA may include a range of activities under its new system of differentiated recognition, accountability, and support, and its LEAs would be required to fully participate in the SEA’s new system.

SEAs should bear in mind that the comprehensive nature of this flexibility — including the comprehensive set of waivers and principles that comprise this flexibility — is intended to support SEAs and LEAs in advancing their current efforts to improve student academic achievement and increase the quality of instruction while taking into account unique local circumstances.

Accordingly, in deciding how it will implement the waivers provided by this flexibility, an SEA should work with its LEAs to strike the proper balance between providing guidance and the flexibility LEAs need to implement strategies that will improve student academic achievement and increase the quality of instruction. (Modified November 10, 2011, August 3, 2012)

**A-9. How do the waivers included in this flexibility affect other waivers an SEA or LEA might already have received from the Department?**

In general, an SEA or LEA may continue to implement previously approved waivers of ESEA requirements as long as that continued implementation does not conflict with the SEA's or LEA's ability to implement each of the principles of this flexibility. For example, an SEA that has been granted a waiver to use a growth model in determining adequate yearly progress (AYP) will likely be able to continue to do so, as long as the growth model does not interfere with the SEA's implementation of the principles of this flexibility, including implementation of the SEA's differentiated recognition, accountability, and support system. To the extent that the waivers included in this flexibility are broader than a previous waiver an SEA or LEA has received, the waivers in this flexibility would encompass or supersede the previously granted waiver. For example, a school implementing a turnaround or restart model under the School Improvement Grants (SIG) program might have received a waiver to "start over" in the school improvement timeline under ESEA section 1116(b). Under this flexibility, no Title I school would be subject to the school improvement timeline in section 1116(b). To the extent that implementing a previously granted waiver interferes with an SEA's or LEA's ability to implement a principle of this flexibility, the SEA or LEA would be required to stop implementing the waiver in order to adhere to the principle. If an SEA or LEA has a specific question about how this flexibility affects other waivers it has received, it may contact the Department for assistance.

**A-10. Does an SEA or LEA have to comply with accountability provisions that are not specifically waived under this flexibility?**

Yes. All accountability provisions that are not waived still apply. For example, SEAs must use a four-year adjusted cohort graduation rates, as set forth in 34 C.F.R. § 200.19(b), and disaggregate that rate for reporting and determining AYP. Similarly, an SEA must use an n-size that ensures, to the maximum extent practicable, that all student subgroups are included in accountability determinations, in accordance with 34 C.F.R. § 200.7(a)(2)(i)(B). Furthermore, other technical accountability requirements, such as those related to confidence intervals and other elements of a State's accountability workbook, remain in effect.

**A-10a. How does ESEA flexibility affect public charter school LEAs and public charter schools?**

In general, ESEA flexibility affects public charter schools (including public charter school LEAs and public charter schools within a regular LEA) in the same manner as it does all other LEAs and public schools. For example, the college-and career-ready standards that an SEA has adopted under Principle 1 apply to public charter schools and traditional public schools alike. Consequently an SEA must include public charter school LEAs and schools in its plan to transition to those standards. Similarly, when an SEA develops high-quality assessments aligned with its college- and career-ready standards, the SEA must administer those assessments to students in public charter schools as well as other public schools.

Under Principle 2, an SEA and its LEAs, as appropriate, must include public charter schools in the State's system of differentiated accountability, recognition, and support. Accordingly, the SEA must apply its annual measurable objectives (AMOs) to public charter school LEAs and schools. Additionally, it must include Title I-participating public charter schools in the pool of schools from

which it identifies reward, priority, and focus schools. A public charter school that the SEA identifies as a priority or focus school must implement interventions consistent with the SEA's ESEA flexibility request.

However, in many cases, a charter school that is performing low enough to be considered a priority or a focus school will face revocation of its charter by its authorizer. When a charter school authorizer has indicated that it intends to decline to renew or intends to revoke a charter for a particular charter school based on lack of progress towards improved student academic outcomes or other significant issues cited by the authorizer, the authorizer's decision to do so supersedes any designation from the SEA that such a school is a focus or priority school, as consistent with any applicable State law. In such cases, the charter school would not implement the interventions associated with the SEA's ESEA flexibility request, and would instead proceed towards school closure as designated by the authorizer. Further, we encourage charter school authorizers and SEAs to work together so that charter school academic performance requirements are at least as rigorous as those used to define priority and focus schools. The Department encourages SEAs to clarify the role they will play in reviewing and supporting or closing persistently low-performing charter schools when authorizers fail to close them.

Under Principle 3, charter schools must develop and implement teacher and principal evaluation and support systems that meet all of the elements of Principle 3 in the document titled *ESEA Flexibility*. To meet this requirement, a charter school may develop and implement a teacher and principal evaluation and support system that is consistent with the guidelines developed and adopted by the SEA. Alternatively, if the SEA can demonstrate to the Department that all charter schools in its State are held to a high standard of accountability through a strong charter school authorizer system (consistent with the Department's Charter Schools Program (CSP) assurances for SEA grantees from FY 2010 onwards, including the provision that charter school authorizers use increases in student academic achievement for all groups of students as the most important factor when determining to renew or revoke a school's charter), the SEA may allow its charter schools to develop and implement evaluation and support systems that meet all of the elements of Principle 3, but that do not necessarily adhere specifically to the SEA's guidelines. (Added May 7, 2012)

**A-10b. Which entity in a State is responsible for ensuring that a charter school LEA or charter school complies with a State's differentiated recognition, accountability, and support system?**

ESEA section 1111(b)(2)(K) requires accountability for charter schools to be overseen in accordance with State charter school law. Thus, a State's charter school law determines the entity within the State that bears responsibility for implementing the State's differentiated recognition, accountability, and support system with respect to public charter schools. This generally means that the charter school authorizer is primarily responsible for holding charter schools accountable unless State law specifies another approach.

Because under ESEA flexibility it is the SEA that establishes AMOs; develops and implements the State's differentiated recognition, accountability and support system; and identifies reward, priority, and focus schools, a charter school authorizer (or other entity designated under State law as responsible for charter school accountability) should maintain close contact with the SEA in order to receive current and accurate information on where charter schools stand within the SEA's system. (Added May 7, 2012)

**A-10c. Is a charter school that is its own LEA included in an SEA’s differentiated recognition, accountability, and support system as an LEA or as a school?**

A charter school that is its own LEA is subject to the recognition, accountability, and support provisions that apply to *schools*. For purposes of this flexibility, an SEA will treat all charter schools — regardless of LEA status — as schools. Accordingly, an SEA would include charter school LEAs when it identifies reward, priority, and focus schools. A charter school LEA that is identified as a reward school would be eligible for recognition and rewards like any other public school, and a charter school LEA that is identified as a priority school would need to implement interventions consistent with the turnaround principles and the SEA’s flexibility request. This same policy applies to all single-school LEAs that receive Title I, Part A funds. (Added May 7, 2012)

**A-10d. May a charter authorizer impose more rigorous accountability requirements on a charter school than an SEA’s differentiated recognition, accountability, and support system would otherwise require?**

Yes. Nothing in ESEA flexibility prohibits the continuation of existing charter contracts or the development of future contracts that exceed the minimum requirements of an SEA’s system under ESEA flexibility. If a charter school’s contract with its authorizer imposes more immediate or rigorous consequences than an SEA’s differentiated accountability system would impose, the authorizer should take appropriate steps to ensure that the charter school abides by the charter contract as specified in the State’s charter school law. For example, a charter school authorizer retains the authority to close a low-performing charter school under the timeframes and according to the performance expectations in its charter contract and under State law, and the identification of a charter school as a priority or focus school should not be used as evidence to delay or avoid closure if the school is failing to meet the terms of its charter contract. (Added May 7, 2012)

**A-11. Does the flexibility afforded by this flexibility affect an SEA’s or LEA’s responsibility to comply with civil rights laws?**

No. The receipt of Federal funds obligates an SEA and its LEAs to comply with civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age. This includes, for example, the obligation of an LEA to identify English Learners and make its educational programs accessible to those students. Because each SEA and LEA that receives the waivers that are part of this flexibility also receives Federal funds under Title I, Part A (as well as other Federal education programs), each agency must comply with the civil rights laws in its implementation of this flexibility (as well as its implementation of all its Federal education programs). For information on applicable civil rights laws, see the *Notice on Civil Rights Obligations Applicable to the Distribution of Funds under the American Recovery and Reinvestment Act of 2009* [available at: <http://www.ed.gov/policy/gen/leg/recovery/notices/civil-rights.html>].

**A-12. Does this flexibility affect the rights of a student with a disability to a free appropriate public education (FAPE) in accordance with the student’s individualized education program (IEP) as required by Part B of the Individuals with Disabilities Education Act (IDEA) or FAPE as required by Section 504 of the Rehabilitation Act of 1973 (Section 504)?**

No. Nothing in this flexibility affects an SEA's or LEA's responsibility to provide FAPE to a student with a disability in accordance with the student's IEP as required by IDEA or FAPE as required by Section 504. To the extent that Section 504 FAPE requires, or a student's IEP includes, services or activities that an LEA or school is providing pursuant to its identification for improvement, corrective action, or restructuring under ESEA section 1116, an LEA must continue to provide those services or activities to that student even when the LEA and its schools are no longer in improvement status. Moreover, although the IEP team may modify the student's IEP through the appropriate IEP revision process, or the group of knowledgeable persons identified under Section 504 may modify the identified services and activities, those revisions must ensure that the student will continue to receive FAPE. (Modified August 3, 2012)

**A-13. Are there specific provisions in this flexibility that address SEA and LEA responsibilities with respect to serving English Learners?**

Yes. English Learners are covered by all the principles of this flexibility. In addition, there are several specific ways in which the principles address SEA and LEA responsibilities with respect to serving English Learners. For example, an SEA must support English Learners in reaching the State's college- and career-ready standards in at least reading/language arts and mathematics by committing to adopt English language proficiency (ELP) standards that correspond to its college- and career-ready standards and that reflect the academic language skills necessary to access and meet those new standards. As part of the SEA's plan to transition to college- and career-ready standards, the SEA should analyze the linguistic demands of those standards to inform the development or revision of its corresponding ELP standards and to ensure that English Learners will be able to access the college- and career-ready standards. In addition, the SEA must commit to develop and administer aligned ELP assessments. However, until an SEA's new ELP standards and assessments are in place, the SEA and its LEAs must continue to implement its current ELP standards and assessments.

An SEA must also include English Learners in its system of differentiated recognition, accountability, and support. As part of that system, the SEA must set new ambitious but achievable AMOs — in at least reading/language arts and mathematics for the State and all LEAs, schools, and subgroups — that provide meaningful goals and are used to guide support and improvement efforts. As such, for an LEA that receives Title III funds, an SEA would use these new AMOs to calculate compliance with the third annual measurable achievement objective (AMAO) required under ESEA section 3122(a)(3)(iii). Such an LEA, however, would continue to address the other AMAOs required under ESEA section 3122(a)(3), in addition to meeting all other Title III requirements. For additional information on Title III accountability for an SEA that receives the optional waiver regarding AYP determinations, see question B-11. (Modified August 3, 2012)

**A-14. What if an SEA was not able to request ESEA flexibility in Window 1 or Window 2 because it needed additional time to plan for implementation of this flexibility?**

An SEA that was not able to request ESEA flexibility in Window 1 or Window 2 because it needed additional time to plan for implementation of this flexibility may request approval to use as its AMOs for determining AYP based on assessments administered in the 2011–2012 school year the same AMOs that it used the previous year. In return for this temporary flexibility, the SEA must adopt college- and career-ready standards; link teacher, principal, and student data and provide that

information to educators to improve their practices; and identify persistent achievement gaps within the State. The Department published additional information regarding this one-year AMO waiver on February 14, 2012, which is available on the Department's website at:

<http://www.ed.gov/esea/flexibility>. (Modified August 3, 2012)

**A-15. Does this flexibility affect the parental involvement requirements under ESEA section 1118?**

No. This flexibility does not waive the parental involvement requirements of ESEA section 1118. For example, LEAs and schools will still be required to have written parent involvement policies; provide materials and training for parents to work with their children to improve academic achievement; and educate teachers, principals, and other staff on how to reach out to parents as partners in the education of their children. (Added November 10, 2011)

**A-16. What is the role of parents and the broader community in developing a request for, and then implementing, ESEA flexibility?**

An SEA developing a request for ESEA flexibility must meaningfully engage and solicit input from teachers and their representatives, as well as diverse stakeholders, such as students, parents, community-based organizations, civil rights organizations, organizations representing students with disabilities and English Learners, business organizations, and Indian tribes (see D-2). An SEA must also consult with its Committee of Practitioners, which includes parents, regarding the information set forth in its request (see D-3). If the SEA's request for flexibility is granted, an LEA with one or more priority schools must seek input from families and the community in selecting the meaningful interventions aligned with the turnaround principles that will be implemented in these schools. Additionally, an LEA's interventions in priority schools must include ongoing mechanisms for family and community engagement (see C-37).

Under ESEA flexibility, parents will continue to receive information on their children's progress in meeting State academic achievement standards as well as their school's success in helping all students meet those standards. Parents will know whether their children's schools are succeeding, by being identified as reward schools, or falling short, by being identified as priority or focus schools. When schools fall short, parents can be assured that school leaders will adopt strategies focused on school needs and targeted towards the students most at risk. (Added November 10, 2011)

**A-17. May the Secretary waive the requirements for an LEA to provide for the equitable participation of private school students and teachers?**

No. Under ESEA section 9401(c)(5), the Secretary may not waive any statutory or regulatory requirement related to the equitable participation of private school students, teachers, and families. (Added November 10, 2011)

**A-18. Do the supplement not supplant requirements of Title I, Part A apply if an LEA uses Title I, Part A funds to implement an SEA's ESEA flexibility request?**

Yes, in the same manner and to the same extent that the supplement not supplant requirements apply to the use of Title I, Part A funds for other activities. See also A-19 with respect to using Title I, Part A funds as general aid to support all students or teachers.

In general, an LEA and its schools may use Title I, Part A funds only to supplement, and in no case supplant, the funds that would, in the absence of the Title I, Part A funds, be available from non-Federal sources for the education of students participating in Title I programs. The supplement not supplant provisions operate differently depending on the type of Title I program a school is operating. Please note that the Secretary may not waive the supplement not supplant requirements. Schoolwide program: If an LEA has a Title I school operating a schoolwide program, the LEA must ensure that, of the non-Federal funds available to the LEA in a given year, the school receives all of those funds it would otherwise have received if it were not operating a schoolwide program, including those funds necessary to provide the basic education program for all students as well as services required by law for students with disabilities and ELs (ESEA section 1114(a)(2)(B)). However, the school does not need to demonstrate that Title I, Part A funds are used only for activities that supplement those the school would otherwise provide with non-Federal funds (ESEA section 1114(a)(2)(A)(ii)). In other words, the focus is on ensuring that a Title I schoolwide school receives all the resources it would receive were it not operating a schoolwide program, not on the supplemental nature of the services provided with Federal funds or the eligibility of particular students to receive those services. Note that, under ESEA flexibility, an LEA would have flexibility to operate a schoolwide program in a Title I school that does not meet the 40 percent poverty threshold in ESEA section 1114(a)(1) if the SEA has identified the school as a priority school or a focus school, and the LEA is implementing interventions consistent with the turnaround principles or interventions based on the needs of the students in the school and designed to enhance the entire educational program in the school, as appropriate.

Example: As part of its ESEA flexibility request, an SEA develops an A-F grading system pursuant to which each school in the State is assigned a grade based on a number of factors, such as student achievement, student growth, and graduation rates. The SEA allocates supplemental State funds to its LEAs for use in all schools that receive a D or F grade in order to implement specific interventions designed to improve the achievement of their students. The SEA must allocate a proportionate share of those funds for Title I schoolwide schools, even though those schools also receive Title I, Part A funds that they may use to implement the interventions.

Targeted assistance program: If an LEA has a school operating a targeted assistance program, the LEA must ensure that the school uses Title I, Part A funds only for activities that supplement those that would be available for Title I students from non-Federal funds in the absence of the Title I, Part A funds (ESEA section 1120A(b)). To determine whether its use of Title I, Part A funds violates the supplanting prohibition in a targeted assistance program, the LEA must determine what activities it would have provided with non-Federal funds if Title I, Part A funds were not available using the following three presumptions:

1. Whether the activity is required by law: Using Title I, Part A funds for an activity that an LEA is required to provide by local, State, or other Federal law raises a presumption of supplanting. Presumably, the LEA would use non-Federal funds to provide services that it is required by law to provide.

In response to the opportunity to request ESEA flexibility, many States have enacted laws or promulgated regulations to govern their LEAs' implementation of the SEA's ESEA flexibility request. Other SEAs have incorporated into their ESEA flexibility request plans that rely on existing State laws or regulations, with necessary modifications to meet the ESEA flexibility principles. In light of the critical nature of the three ESEA flexibility principles to a State's educational system, we presume that State laws or regulations that an SEA has incorporated into its ESEA flexibility request stem from that request and would not have been required of LEAs, at least in precisely that form, in the absence of ESEA flexibility. Thus, an LEA that is using Title I, Part A funds to implement elements of its SEA's flexibility request that are required by State law or regulations would not violate the "required by law" presumption of supplanting.

Example: A State enacts an A-F grading system that the SEA incorporates into its ESEA flexibility request as the basis for its State-developed differentiated recognition, accountability, and support system. According to State law, as reflected in the SEA's request as part of its differentiated recognition, accountability, and support system, a school that receives an F grade must implement schoolwide interventions that meet the turnaround principles. Because the State legal requirement is tied to the State's flexibility request, we would not consider the use of Title I funds to meet the requirement as presumptively violating the supplement not supplant requirement. Therefore, assuming use of the funds does not violate presumptions 2 and 3 below, an LEA may use Title I, Part A funds to implement those interventions even though they are required by State law.

Although an LEA may use Title I, Part A funds without violating the "required by law" presumption of supplanting, it must consider the following presumptions in its use of Title I, Part A funds to implement ESEA flexibility.

2. Whether the activity was provided in prior years with non-Federal funds: Using Title I, Part A funds for an activity, otherwise allowable under Title I, Part A, that an LEA provided in prior years with non-Federal funds raises a presumption of supplanting. Presumably, those activities the LEA deemed sufficiently important to support with non-Federal funds last year, for example, are a reliable predictor as to how it would likely spend its non-Federal funds in the current year.

This presumption may be rebutted, however, if the LEA can document contemporaneously that it would not have continued to provide the same activities with non-Federal funds, perhaps because of a budget shortfall or the changing educational needs of its students.

Example: Last year, an LEA used supplemental local funds in each Title I school identified for restructuring to support a turnaround specialist in order to guide strategies designed to improve the achievement of students in those schools. Due to budget cuts, those funds are no longer available. The LEA may be able to rebut the presumption of supplanting by documenting contemporaneously that, in the absence of Title I, Part A funds, the LEA would no longer support the turnaround specialists. Such documentation should demonstrate that:

- There was in fact a reduction in the local funds available to the LEA; and
- The LEA made the decision to eliminate the turnaround specialists without taking into consideration the availability of Title I, Part A funds. These records, such as

school board minutes, would include the reasons for the decision to eliminate the turnaround specialists.

After documenting the unavailability of local funds, the LEA may use Title I, Part A funds to implement the same or similar strategies consistent with the SEA's ESEA flexibility request.

3. Whether the activity is provided to non-Title I students with non-Federal funds: Using Title I, Part A funds for an activity that an LEA is providing to non-Title I students with State or local funds raises a presumption of supplanting. Presumably, if an LEA deems an activity sufficiently important to provide it to non-Title I students, the LEA would also provide that same activity to Title I students in the absence of Title I, Part A funds.

This presumption is particularly relevant in a number of States receiving ESEA flexibility because they are implementing their State-developed differentiated recognition, accountability, and support system in all schools, not just Title I schools. Under this presumption, in the absence of Title I, Part A funds, an LEA would use State or local funds to provide rewards and implement interventions in its Title I schools as it would do in its non-Title I schools in order to carry out the SEA's ESEA flexibility request in all its schools.

This presumption of supplanting may also be rebutted. If the services provided to non-Title I students meet the intent and purposes of the Title I, Part A program, in accordance with the criteria in 34 C.F.R. § 200.79(b), the LEA may exclude those services from supplement not supplant considerations (ESEA section 1120A(d); 34 C.F.R. § 200.79(b)). In other words, if the services would be allowable under Title I, Part A — that is, they are supplemental and designed specifically to improve the achievement of students who are failing, or most at risk of failing, to meet State standards — they would not be considered in determining whether there is a supplanting violation, even if they are funded with supplemental State or local funds in non-Title I schools and Title I, Part A funds in Title I schools.

Example: An SEA identifies in its ESEA flexibility request all F schools in the State as priority schools. Consistent with ESEA section 1120A(d) and 34 C.F.R. § 200.79(b), an LEA would not presumptively violate the supplement not supplant requirement if it uses Title I, Part A funds to implement interventions consistent with the turnaround principles in its Title I priority schools and uses supplemental State or local funds to provide the same interventions in its non-Title I priority schools. (Added August 3, 2012)

#### **A-19. May an LEA use Title I, Part A funds to implement activities in an SEA's ESEA flexibility request that apply to all students or teachers in the State?**

Although some flexibility exists, generally, Title I, Part A funds may *not* be used to conduct activities that benefit all students or teachers in the State, absent express statutory authority to do so. Title I, Part A funds may be used only to benefit students who are participating in a Title I program — that is, all students in a schoolwide program, but particularly those who are low-achieving (ESEA section 1114(a)(1)), and students who are failing, or most at risk of failing, to meet State academic achievement standards in a targeted assistance program (ESEA section 1115(a)). Similarly, an LEA may use Title I, Part A funds to provide professional development to all teachers in a schoolwide program school, but only to teachers who work with at-risk students in a targeted assistance school. An LEA may not use Title I, Part A funds to benefit the general needs of students or teachers in the LEA as a whole, absent express statutory authority to do so, unless all schools in the LEA are Title I

schools operating schoolwide programs. An example of such express statutory authority is ESEA section 1116(c)(7)(A)(iii), which permits an LEA in improvement or corrective action to use Title I, Part A funds to meet the professional development needs of all instructional staff serving the LEA. See B-10a for how this express authority applies to professional development under ESEA flexibility, which waives ESEA section 1116(c).

Principles 1 and 3 of ESEA flexibility, in particular, raise issues regarding the allowable use of Title I, Part A funds because they pertain, respectively, to all students or all teachers and principals. Under Principle 1, an SEA must have adopted college- and career-ready standards in at least reading/language arts and mathematics and commit to develop and implement an aligned assessment system. ESEA section 9201(f) expressly authorizes the SEA to use consolidated State administrative funds, and by extension Title I, Part A State administrative funds, to develop such standards and assessments for all students. There is no similar authority, however, to permit an SEA or LEA to use Title I, Part A funds for activities to transition to and implement those standards for all students and teachers in the State or in an LEA. Similarly, under Principle 3, an SEA and each LEA must commit to develop, adopt, pilot, and implement teacher and principal evaluation and support systems. There is no express authority to permit an SEA or LEA to use Title I, Part A funds as a general source of funds to develop and implement these systems. Title I, Part A funds may be used, of course, in a supplemental manner, consistent with the supplement not supplant requirements. See A-15. (Added August 3, 2012)

## **B. GUIDANCE REGARDING WAIVERS IN ESEA FLEXIBILITY**

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This section provides guidance with respect to the provisions that would be waived as part of this flexibility. The document titled *ESEA Flexibility* contains definitions for the following terms used in this section: (1) focus school; (2) priority school; and (3) turnaround principles.

### **TIMELINE FOR 100 PERCENT PROFICIENCY**

#### **B-1. What does this flexibility permit with respect to the timeline for ensuring 100 percent proficiency by the end of the 2013–2014 school year?**

Under ESEA section 1111(b)(2)(F) and 34 C.F.R. § 200.15, each SEA was required to establish a timeline for making AYP to ensure that all students, including all students in each subgroup, would meet or exceed the SEA's proficient level of academic achievement by the end of the 2013–2014 school year. Under this flexibility, an SEA may instead set AMOs in at least reading/language arts and mathematics for the State, LEAs, schools, and student subgroups that are ambitious but achievable. The SEA has flexibility to determine how to set these AMOs. See B-3 through B-6.

#### **B-2. When may an SEA reset its AMOs?**

An SEA may propose new AMOs for approval by the Department as part of its request for this flexibility. Those proposed AMOs will be reviewed as part of the review of the SEA's request. See B-3 through B-6. For an SEA that receives flexibility in Window 1 or Window 2, the new AMOs may be used for determining AYP based on assessments administered as early as the 2011–2012 school year; for an SEA that receives flexibility in Window 3, the new AMOs may be used for determining AYP based on assessments administered as early as the 2012–2013 school year. Additionally, once an SEA has adopted new achievement standards that are aligned with its college- and career-ready standards, it may reset its AMOs based on the percentage of students who are college- and career-ready or on track to college- and career-readiness. (Modified August 3, 2012)

#### **B-3. How may an SEA reset its AMOs to take advantage of this waiver?**

An SEA has flexibility in determining how it resets its AMOs, but the AMOs must be ambitious but achievable and provide meaningful goals that are used to guide support and improvement efforts for the State, LEAs, schools, and student subgroups. An SEA may reset its AMOs by:

- A. Setting AMOs in annual equal increments toward a goal of reducing by half the percentage of students in the “all students” group and in each subgroup who are not proficient within six years;
- B. Setting AMOs that increase in annual equal increments and result in 100 percent of students achieving proficiency by no later than the end of 2019–2020 school year; or
- C. Using another method that is educationally sound and results in ambitious but achievable AMOs for all schools and all subgroups.

If an SEA chooses to reset its AMOs using options A or B above, the AMOs will be reviewed by Department staff; if an SEA chooses to reset its AMOs using option C, the AMOs will be peer reviewed.

**B-4. How does an SEA calculate new AMOs under option A (reducing by half the percentage of students in the “all students” group and in each subgroup who are not proficient within six years)?**

An SEA that requested flexibility in Window 1 or Window 2 and chose option A set a six-year goal for the percentage of proficient students in the State by calculating the percentage of students who were not proficient in the 2010–2011 school year, dividing that percentage by 2, and subtracting it from 100 percent. This percentage is the SEA’s goal for the 2016–2017 school year, and the SEA set AMOs in annual equal increments toward this goal. An SEA repeated this process for each subgroup of students in the State to identify the SEA’s goal for the 2016–2017 school year for each subgroup, ensuring that the State’s six-year goals reduce by half the percentage of students in each subgroup who are not proficient and that subgroups of students who are further behind are expected to make greater rates of annual progress. For example, a State that had 60 percent of its students proficient in the 2010–2011 school year had 40 percent of its students not proficient. The SEA divided 40 percent by 2 to get 20 percent, and subtracted this from 100 percent to get 80 percent. 80 percent is then the SEA’s goal, and the SEA set AMOs in annual equal increments based on a timeline that ends with 80 percent proficiency in the 2016–2017 school year. An SEA was permitted to use the same procedure to set different AMOs for individual schools and subgroups within a school using the school’s current performance as the starting point, so long as the AMOs require greater gains for schools and subgroups that are further behind and result in reducing by half the percentage of students who are not proficient within six years. For an SEA that chose this option, Department staff reviewed the AMOs to ensure that they met these requirements, but the AMOs were not peer reviewed.

An SEA that requests flexibility in Window 3 and chooses option A must use the same process for setting its six-year goal, but the baseline would be the 2011–2012 school year and the goal would be for the 2017–2018 school year. Thus, for example, a Window 3 State that has 60 percent of its students proficient in the 2011–2012 school year would set AMOs in annual equal increments based on a timeline that ends with 80 percent proficiency in the 2017–2018 school year. (Modified August 3, 2012)

**B-5. How does an SEA calculate new AMOs under option B (extending the length of the timeline to no later than the 2019–2020 school year)?**

An SEA that requested flexibility in Window 1 or Window 2 and chose option B set its AMOs by starting with the average statewide proficiency in the 2010–2011 school year and, from that starting point, setting AMOs that increase in annual equal increments and result in 100 percent of students achieving proficiency by no later than the end of the 2019–2020 school year. An SEA was permitted to use the same procedure to set different AMOs for individual schools and subgroups within a school using the school’s current performance as the starting point, so long as the AMOs require greater gains for schools and subgroups that are further behind and result in 100 percent proficiency by no later than the 2019–2020 school year. In addition, the SEA provided the method used to reset the AMOs and the new annual targets to 2020. For an SEA that chose this option, Department staff reviewed the AMOs to ensure that they met these requirements, but the AMOs were not peer reviewed.

An SEA that requests flexibility in Window 3 and chooses option B must use the same methodology as set forth above, but would use 2011–2012 as its baseline year. Thus, a Window 3 SEA would set

its AMOs by starting with the average statewide proficiency in the 2011–2012 school year and, from that starting point, setting AMOs that increase in annual equal increments and result in 100 percent of students achieving proficiency by no later than the end of the 2019–2020 school year. A Window 3 SEA may also use the same procedure to set different AMOs for individual schools and subgroups within a school, as set forth above. (Modified August 3, 2012)

**B-6. What are the requirements for an SEA that chooses option C to reset its AMOs (using another method that is educationally sound and results in ambitious but achievable AMOs for all schools and all subgroups)?**

An SEA that chooses option C may reset its AMOs using a State-determined method. The SEA must provide its rationale and submit evidence that its method is educationally sound and results in AMOs that (1) are ambitious but achievable and (2) require schools and subgroups that are further behind to make greater rates of annual progress than other schools and subgroups. For example, an SEA might set AMOs that require all schools to make as much progress as the school at the 90<sup>th</sup> percentile when all schools in the State are ranked by rate of progress, if the SEA provides sufficient evidence that such AMOs are educationally sound and ambitious but achievable. For an SEA that chooses this option, its proposed AMOs, and the evidence supporting them, will be peer reviewed. In evaluating whether the State-determined method results in AMOs that are ambitious but achievable, the peer reviewers may compare the AMOs set by an SEA pursuant to this option to what the State’s AMOs would have been under options A and B.

**B-7. Must an SEA’s revised AMOs be the same for all schools in the State?**

No. An SEA may set different AMOs for individual schools, consistent with options A through C described in B-4 through B-6, using the school’s current performance as the starting point, so long as the AMOs require greater gains for schools that are further behind.

**B-8. Deleted February 10, 2012**

**SCHOOL IMPROVEMENT REQUIREMENTS**

**B-9. What provisions of ESEA section 1116 pertaining to the identification of a school for improvement, corrective action, or restructuring are included in this flexibility?**

This flexibility relieves an LEA from the school improvement requirements in ESEA section 1116(b) and their associated regulatory requirements. An LEA need not identify a Title I school as in need of improvement, corrective action, or restructuring, even if the school has missed AYP for two or more years. Accordingly, the LEA and school do not need to take the required steps that accompany such identification, including developing and implementing a school improvement plan, reserving funds for professional development, or providing public school choice and supplemental educational services (SES) and, concomitantly, spending the requisite amount of funds on these activities. Moreover, an SEA and its LEAs are not required to report the improvement status of schools on State and local report cards.

**B-10. May an LEA spend the funds that it otherwise would be obligated to spend for choice-related transportation and SES or for professional development on any allowable activity that is designed to improve student achievement?**

Generally, yes. This flexibility relieves an LEA from the requirement to spend an amount equal to 20 percent of its Title I, Part A allocation on choice-related transportation and SES, and from the requirement to spend an amount equal to 10 percent of its Title I, Part A allocation on professional development. An LEA has the flexibility to spend these funds on any activity allowable under Title I, Part A that is designed to improve student achievement or support teacher and leader effectiveness, including to support the implementation of interventions in priority and focus schools; to provide high-quality expanded learning time in those schools; to implement other activities identified by the State's differentiated recognition, accountability, and support system; or to carry out other strategies to help students succeed, such as public school choice or SES. Although an LEA is not required to spend these funds on particular activities, LEAs must ensure sufficient support for implementation of interventions in priority schools, focus schools, and other Title I schools identified under the SEA's differentiated recognition, accountability, and support system by leveraging the funds it would otherwise be obligated to spend for choice-related transportation and SES.

**B-10a. Are the Title I, Part A funds that an LEA would otherwise spend for choice-related transportation and SES or for professional development in LEAs identified for improvement subject to the requirements to provide equitable services to eligible private school children, their teachers, and their families?**

Yes, to the same extent and under the same conditions as regular Title I, Part A funds. In general, an LEA allocates its Title I, Part A funds in two ways: it allocates the majority of those funds to its Title I schools consistent with ESEA section 1113(c); and it reserves some funds off the top of its allocation under 34 C.F.R. § 200.77 for both required and permissible activities. An LEA's responsibility to provide equitable services to eligible elementary and secondary private school children, their teachers, and their families depends on the nature of the services provided. Equitable services apply to funds an LEA allocates to its Title I schools under ESEA section 1113(c). They also apply to off-the-top reservations that provide district-wide services to Title I schools. However, they do not apply to reservations from which an LEA provides services to a subgroup of students—e.g., homeless students, neglected and delinquent students—or if an LEA focuses the reserved funds on a specific subset of low-performing schools—e.g., schools in restructuring—because public Title I school students as a whole do not benefit from those services either.

Accordingly, with respect to Title I, Part A funds freed up from not needing to meet the 20 percent obligation or the set aside for professional development under ESEA flexibility, the responsibility to provide equitable services depends on how an LEA uses those funds. If, for example, the LEA allocates the funds under ESEA section 1113(c) to its Title I schools, it must also provide equitable services with the funds. Similarly, if the LEA uses the freed up funds for an off-the-top reservation to provide summer school or professional development to all its Title I schools, or all its Title I schools at a particular grade level, the requirement to provide equitable services would apply. On the other hand, if the LEA uses funds from an off-the-top reservation to implement interventions in its priority and/or focus schools, the equitable services requirement would not apply. (Added November 10, 2011)

**B-10b. Must an LEA consult with private school officials prior to deciding how to use Title I, Part A funds that may be freed up if the LEA is no longer required to meet the requirements in ESEA section 1116?**

Yes. Under ESEA section 1120(b), an LEA must consult with private school officials during the design and development of the LEA's Title I, Part A programs. That consultation must include meetings of LEA and private school officials and must occur before the LEA makes any decision that affects the opportunity of eligible private school children to participate in Title I, Part A programs, including decisions regarding the use of funds freed up under ESEA section 1116. (Added November 10, 2011)

**B-10c. Question A-8 indicates that an LEA may choose not to implement a waiver of an LEA-level requirement, such as the requirement to provide SES or the requirement to provide public school choice. Given that under ESEA flexibility schools are no longer identified for improvement, corrective action, or restructuring, how might an LEA that wants to offer choice and SES (by not implementing the waiver of these federal requirements) do so?**

As A-8 indicates, an LEA may choose not to implement a waiver of an LEA-level requirement, such as the requirement to provide SES or the requirement to provide public school choice, unless the SEA requires it to do so as part of the State's new system of differentiated recognition, accountability, and support. Under ESEA flexibility, in place of the requirement to identify schools for improvement, corrective action, or restructuring is the requirement to identify priority and focus schools. Accordingly, if an LEA chooses not to implement the waiver of the requirement to provide SES or the requirement to provide public school choice and to pay for choice-related transportation, it would identify eligible students using the same criteria as under current law, but would identify eligible students in priority and focus schools instead of schools in improvement, corrective action and restructuring. In addition, to the extent an SEA identifies a subset of its other Title I schools as low-achieving schools, an LEA would be able to provide these services to eligible students in those schools, as well. Additionally, an LEA may continue to use Title I, Part A funds to provide choice-related transportation for students who transferred from a Title I school that was identified for improvement, corrective action, or restructuring, even if that school is not identified as a priority or focus school, as long as the students continue to be enrolled in the school of choice.

Whether an LEA may use Title I funds to provide SES to students in other Title I schools that are not identified as low-achieving would be determined the same way an LEA would decide, under current law, whether it could use Title I funds to provide SES to students in Title I schools that are not identified for improvement, corrective action, or restructuring. Generally, providing transportation to students in order for them to attend school is a regular responsibility an LEA carries out for all students and, thus, may not be paid for with Federal funds unless specifically authorized. Because paying for choice-related transportation with Title I funds is specifically authorized only for students in priority schools, focus schools, and subsets of other Title I schools specifically identified as low-achieving, an LEA generally may not use Title I funds to pay for public school choice-related transportation for students in other schools. For additional information on factors an LEA should take into account in deciding whether a particular use of Title I funds is allowable, refer to *Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies to Strengthen Education, Drive Reform, and Improve Results for Students* (Sept. 2, 2009) [available at: <http://www2.ed.gov/policy/gen/leg/recovery/programs.html>]. (Added August 3, 2012)

**B-11. Does an SEA have flexibility with respect to whether it and its LEAs will make AYP determinations under ESEA flexibility?**

Yes. An SEA that receives ESEA flexibility may continue to make AYP determinations for its LEAs, and its LEAs may continue to make AYP determinations for their schools, based on the SEA's new AMOs, and include these determinations on State and local report cards. An SEA may choose to continue making AYP determinations particularly if determining AYP is an integral part of the SEA's accountability and support system (*e.g.*, if the State has a "parent trigger" law that is linked to AYP determinations). However, the Department recognizes that making a single AYP determination for LEAs and schools might not be consistent with the new system of differentiated recognition, accountability, and support proposed by an SEA as part of its request for ESEA flexibility. The Department also believes that, because ESEA flexibility requires an SEA to report performance against AMOs for the "all students" group and all ESEA subgroups and to use its AMOs as a factor in determining incentives and supports to ensure continuous improvement in Title I schools that are not reward, priority, or focus schools, determining and reporting AYP might no longer be essential for meaningful accountability under such a system.

For these reasons, an SEA may request an additional waiver so that it and its LEAs will no longer be required to make AYP determinations. Instead, an SEA and its LEAs would report on their report cards, for the "all students" group and for all subgroups identified in ESEA section 1111(b)(2)(C)(v) in each LEA and school, respectively, achievement at each proficiency level, performance against the AMOs (*e.g.*, "met" or "not met"), participation rate, and graduation rate for high schools or the other academic indicator for elementary and middle schools. In addition, the SEA and its LEAs would continue to comply with all other reporting requirements in ESEA section 1111(h)(1)(C) and 1111(h)(2)(B), including, for example, reporting information on achievement at each proficiency level disaggregated by gender and migrant status.

An SEA that requests this optional waiver would not need to make an AYP determination for its LEAs, and its LEAs would not need to make an AYP determination for their schools. In addition, any element of ESEA flexibility that is linked to making AYP would instead be linked to meeting the State's AMOs, the 95 percent participation rate requirement, and the graduation rate goal or targets for high schools or the other academic indicator for elementary and middle schools. For example, the definition of "reward schools" provides that "a highest-performing school must be making AYP for the 'all students' group and all of its subgroups." For an SEA that requests this additional waiver, a highest-performing school must be meeting the State's AMOs, the 95 percent participation rate requirement, and the graduation rate goal or target for a high school or the other academic indicator for an elementary or middle school for the "all students" group and all subgroups.

An SEA that receives this optional waiver would need to modify how it implements certain existing provisions that apply to how AYP determinations are made. In general, the provisions that apply to AYP determinations would instead apply to the reporting of performance against the AMOs, participation rate, graduation rate, and the other academic indicator. The table below provides additional detail for how this would work with respect to particular provisions related to making AYP determinations.

<b><u>Provisions related to AYP</u></b>	<b><u>Application in a State that Receives Optional Waiver</u></b>
<u>Participation rate</u> — For a school to make AYP, not less than 95 percent of each subgroup of students who are enrolled in the school are required to take the assessments (ESEA section 1111(b)(2)(I)(ii))	SEA and LEAs would continue to report participation rate separately (like they do under current law), and a subgroup would not be able to make its AMOs unless it has at least a 95 percent participation rate
<u>Safe harbor</u> — A school may be considered to have made AYP if the percent of students not proficient decreases by 10 percent from the prior year (ESEA section 1111(b)(2)(I)(i))	Would no longer apply because safe harbor is a concept intrinsically linked to making AYP determinations (although an SEA might keep some concept of safe harbor in AMOs established under Option C)
<u>“One/two percent rules”</u> — In determining AYP, a State may count the proficient and advanced scores of students with disabilities who take an alternate assessment based on alternate academic achievement standards, up to a cap at the LEA and State levels of one percent of all students assessed (34 C.F.R. § 200.13(c)(2)(i)). As applicable, a State may count the proficient and advanced scores of students with disabilities who take an alternate assessment based on modified academic achievement standards, up to a cap at the LEA and State levels of two percent of all students assessed (34 C.F.R. § 200.13(c)(2)(ii), (3))	Caps would apply to making accountability determinations (see B-11a) (but, like under current law, not to reporting achievement at each proficiency level)
<u>Full academic year</u> — In making AYP determinations for a school or LEA, an LEA or SEA, respectively, is required to include only students who were enrolled in the school or LEA for a full academic year (34 C.F.R. § 200.20(e))	Would apply to reporting performance against the AMOs (all students, regardless of length of enrollment, would be included in all other reporting)
<u>Counting recently arrived English Learners as participants</u> — In determining AYP for a school or LEA, an SEA may count as a participant a recently arrived English Learner who took: (1) either the State’s reading/language arts assessment or the English language proficiency assessment; and (2) the mathematics assessment (34 C.F.R. § 200.20(f)(1)(i))	Would apply to reporting participation rates

<u>Provisions related to AYP</u>	<u>Application in a State that Receives Optional Waiver</u>
<u>Including scores of recently arrived English Learners</u> — In determining AYP for a school or LEA, an SEA may choose not to include the scores of recently arrived English Learners on the mathematics or reading/language arts assessment (34 C.F.R. § 200.20(f)(1)(ii))	Would apply to reporting performance against the AMOs
<u>Including former English Learners and students with disabilities in those subgroups</u> — In determining AYP for English Learners and students with disabilities, an SEA may include, for up to two years, the scores of former English Learners and students with disabilities (34 C.F.R. § 200.20(f)(2))	34 C.F.R. § 200.20(f)(2)(iii) would continue to apply; this provision permits the scores of former English Learners and students with disabilities to be included with the scores of current English Learners and students with disabilities for purposes of reporting performance against the AMOs, but not for any other reporting purpose
<u>Growth models</u> — An SEA may request to include a measure of student growth in its definition of AYP	Would apply to reporting performance against the AMOs
<u>Title III, AMAO 3</u> — Each SEA must set annual measurable achievement objectives (AMAOs) for English Learners served under Title III; AMAO 3 is based on making AYP for English Learners (ESEA 3122)	Would determine AMAO 3 based on whether the subgroup of English Learners met the AMOs, the 95 percent participation rate requirement, and the other academic indicator

Although the ESEA does not impose a particular deadline for publishing SEA and LEA report cards, the Department encourages all SEAs and LEAs, but particularly those that receive this optional waiver, to publish their report cards as early as possible in order to ensure that parents and other stakeholders have access to the information in the report cards in a timely manner. (Modified February 10, 2012)

**B-11a. Do the limits on how an SEA may include the proficient and advanced scores of students with disabilities who take an alternate assessment based on alternate or modified academic achievement standards still apply under this flexibility?**

Yes. An SEA that administers alternate assessments based on alternate academic achievement standards may include the proficient and advanced scores of students with the most significant cognitive disabilities who are eligible for such assessments in making accountability determinations under its differentiated recognition, accountability and support system, consistent with the limitations in 34 C.F.R. § 200.13(c). Additionally, an SEA that administers alternate assessments based on modified academic achievement standards may include the proficient and advanced scores of the students with disabilities who are eligible for such assessments, consistent with the limitations in 34 C.F.R. § 200.13(c), until the SEA administers its new high-quality assessments, which may be no later than the 2014–2015 school year. The accountability determinations for which these scores may be counted, up to the respective caps, include: meeting AMOs; making AYP determinations, as applicable; identifying reward, priority, and focus schools; and otherwise differentiating among schools, such as through an index or an A-F school grading system.

Nothing in ESEA flexibility gives an SEA or LEA the authority to exceed the caps in 34 C.F.R. § 200.13(c) when making accountability determinations. Accordingly, if the number of proficient and advanced scores in a State or LEA is less than the respective caps, the SEA or LEA, in making these accountability determinations, may include all the proficient and advanced scores of students with disabilities taking an alternate assessment. On the other hand, if the number of proficient and advanced scores on alternate assessments in a State or LEA exceeds the caps, the SEA or LEA must count any scores above the caps as not proficient and distribute those non-proficient scores among its LEAs or schools, respectively, in making accountability determinations, unless the SEA or LEA meets the requirements in 34 C.F.R. § 200.13(c)(3) or the LEA receives an exception from the SEA in accordance with 34 C.F.R. § 200.13(c)(5). For examples of how to distribute non-proficient scores, see the Department’s guidance on *Alternate Achievement Standards for Students with the Most Significant Cognitive Disabilities*, H-4, p. 34 (Aug. 2005) [available at: <http://www2.ed.gov/policy/elsec/guid/altguidance.doc>] and *Modified Academic Achievement Standards*, H-4 and H-5, pp. 43-47 (July 20, 2007) [available at: <http://www2.ed.gov/policy/speced/guid/nclb/twopercent.doc>]. (Added February 10, 2012)

## **LEA IMPROVEMENT REQUIREMENTS**

**B-12. What provisions of ESEA section 1116 regarding identification of an LEA for improvement or corrective action are covered by this flexibility?**

This flexibility relieves an SEA from the LEA improvement requirements in ESEA section 1116(c) and from their associated regulatory requirements. An SEA need not identify an LEA as in need of improvement or corrective action, even if the LEA has missed AYP for two or more years, and need not take the required steps that accompany such identification. Similarly, an LEA that has missed AYP for two or more years need not take the actions required of an LEA identified for improvement or corrective action. Moreover, an SEA is not required to report an LEA’s improvement status on its State report card; nor is an LEA required to report improvement status on its district report card.

**B-12a. May an LEA continue to take advantage of the authority in ESEA section 1116(c)(7)(A)(iii) that allows an LEA identified for improvement to spend the Title I, Part A funds it must reserve for professional development to meet the needs of any of the LEA’s instructional staff?**

Yes, in certain circumstances. In general, Title I funds may be used only to serve eligible students and teachers in a Title I-participating school, absent express statutory authority to use those funds more broadly. ESEA section 1116(c)(7)(A)(iii) requires an LEA identified for improvement to spend not less than 10 percent of its Title I allocation to “address the professional development needs of the instructional staff serving the agency.” This language provides express authorization permitting an LEA to spend a portion of its Title I funds at the LEA level for professional development of any of its staff, even those not in Title I schools or who do not serve Title I-participating students in Title I targeted assistance schools, in order to help the LEA raise achievement and exit improvement status. This provision is part of the waiver of ESEA section 1116(c) granted through ESEA flexibility.

Although under ESEA flexibility an SEA need not identify LEAs for improvement or corrective action (see B-12), it may wish to allow LEAs that are identified as low-performing based on the SEA’s differentiated recognition, accountability, and support system to spend Title I funds for professional development of any staff in the LEA to increase student achievement, especially of the lowest-achieving students, in order to improve the performance of the entire LEA. Accordingly, an SEA may permit its LEAs to implement the provisions of ESEA section 1116(c)(7)(A)(iii) if:

- The SEA has criteria and a process for identifying low-performing LEAs based on the performance of all schools and all students;
- The SEA makes public a list of the low-performing LEAs;
- The SEA will permit only those LEAs it has identified as low-performing to use this authority;
- The SEA has a prescribed set of consequences or actions that identified LEAs must undertake to improve student achievement (*e.g.*, the LEA must have a comprehensive improvement plan designed to address root causes that are barriers to improving teaching and learning that includes professional development to address the goals of the plan); and
- An LEA that wishes to take advantage of this authority demonstrates to the SEA’s satisfaction, through monitoring or application review, that there is a need for LEA-wide professional development and that Title I funds are used for professional development linked to, and designed to address, the factors that caused the LEA to be identified.

An SEA with an approved ESEA flexibility request that does not meet these criteria may seek to amend its flexibility request to incorporate provisions that do meet the criteria in order to take advantage of this authority. (Added August 3, 2012)

**B-13. Deleted February 10, 2012**

**B-14. What does this flexibility include with respect to rural LEAs?**

This flexibility permits an LEA that receives Small, Rural School Achievement Program or Rural and Low-Income School Program funds to use those funds for any purpose authorized under the applicable program regardless of the LEA’s AYP status. The LEA that would otherwise have been

identified as in improvement status would no longer be required to use those funds only for activities under 1116; however, the Department encourages LEAs to use these funds for needs identified under the SEA's differentiated recognition, accountability, and support system, including supporting priority and focus schools.

## **STATE-LEVEL RESERVATION FOR SCHOOL IMPROVEMENT**

### **B-15. How does this flexibility affect how an SEA allocates funds it reserves under ESEA section 1003(a)?**

ESEA section 1003(a) generally requires an SEA to reserve four percent of the Title I, Part A funds the State receives in a given fiscal year for school improvement activities. ESEA flexibility does not waive that reservation requirement. ESEA section 1003(a) further requires an SEA to distribute not less than 95 percent of the reserved funds to LEAs for use in schools identified for improvement, corrective action, or restructuring. However, ESEA flexibility waives the requirement to identify schools for improvement, corrective action, or restructuring and instead requires an SEA to identify priority and focus schools. Accordingly, to meet its obligations under ESEA section 1003(a), an SEA that receives this flexibility must allocate the LEA share of these funds to LEAs for use in priority or focus schools. (Modified August 3, 2012)

## **USE OF STATE-RESERVED TITLE I, PART A FUNDS FOR REWARD SCHOOLS**

### **B-16. Does this flexibility permit an SEA to use Title I, Part A funds it reserves from the State's Title I, Part A allocation for monetary rewards to reward schools?**

Yes. ESEA section 1117(c)(2)(A) authorizes an SEA to reserve up to five percent of the amount (if any) by which the State's Title I, Part A allocation in a fiscal year exceeds the amount of the State's allocation for the preceding fiscal year for recognition and awards to schools and teachers. Section 1117(b)(1)(B) sets out the criteria for schools to receive these rewards: a school must have (1) significantly closed the achievement gap between subgroups in the school; or (2) exceeded AYP for two or more consecutive years. Although it is likely that most, if not all, reward schools would meet one of these criteria, this flexibility permits an SEA to use funds reserved under section 1117(c)(2)(A) for any reward school, even if it does not meet the criteria in section 1117(b)(1)(B). Indeed, since reward schools are the schools the SEA determines are most effective and deserving of recognition and rewards under the SEA's differentiated recognition, accountability, and support system, the Department encourages SEAs to use funds reserved under section 1117(c)(2)(A) to reward those schools.

## **POVERTY THRESHOLD FOR SCHOOLWIDE PROGRAMS**

### **B-17. Why might an LEA need a waiver of the poverty threshold to operate a schoolwide program in particular schools?**

Under ESEA section 1114(a)(1) and 34 C.F.R. § 200.25(b)(1)(ii), a Title I school that has a poverty percentage of 40 percent or more may use Title I, Part A funds, along with State, local, and other Federal funds, to improve the achievement of its lowest-achieving students by upgrading the entire educational program in the school.

It is likely that most priority and focus schools will already be operating a schoolwide program and, thus, be able to implement the kind of whole-school interventions required as part of this flexibility. However, if a priority or focus school is operating a targeted assistance program, the LEA may wish to convert the school to a schoolwide program in order to carry out whole-school interventions. Accordingly, under this flexibility, an SEA may permit an LEA to operate a schoolwide program in any Title I school in the LEA that the SEA has identified as a priority or focus school and that is a school in which the LEA is implementing interventions aligned with the turnaround principles or an intervention that is based on the needs of the students in the school and designed to enhance the entire educational program in that school, as appropriate. For example, if an LEA wishes to implement one of the school intervention models defined in the SIG final requirements in a priority school that is operating a targeted assistance program, the LEA would need to convert the school to a schoolwide program in order to use Title I, Part A funds to implement such an intervention.

This waiver carries with it the attendant flexibility that a schoolwide program offers. For example, a school operating a schoolwide program has flexibility with respect to how it accounts for the time and effort of staff supported with Federal funds, particularly if the school consolidates all its funds in a single pool. The school would also have additional flexibility in its use and reporting of Title I, Part A funds, even absent consolidation, and of Federal funds that it consolidates.

An LEA may not implement, in a school operating a targeted assistance program, a schoolwide intervention with Title I, Part A funds in the absence of this waiver.

## **HIGHLY QUALIFIED TEACHER IMPROVEMENT PLAN REQUIREMENTS**

### **B-18. What does this flexibility include with respect to the highly qualified teacher requirements under Title II, Part A and Title I, Part A of the ESEA?**

Under ESEA section 2141(a), an LEA that has not made progress for two consecutive years toward meeting the SEA's annual objectives for ensuring that all teachers teaching core academic subjects are highly qualified must develop an improvement plan. Section 2141(b) requires an SEA to provide the LEA with technical assistance in developing such a plan. Under section 2141(c), if an SEA determines that an LEA has failed to make progress toward meeting those annual objectives and has failed to make AYP for three consecutive years, the SEA must enter into an agreement with the LEA on the use of the LEA's Title II, Part A funds. Under such an agreement, the SEA must develop — in consultation with the LEA, teachers, and principals — professional development strategies and activities that the LEA will use to meet the objective of all of its teachers of core academic subjects being highly qualified. Such an LEA also is prohibited from using Title I, Part A funds to fund any paraprofessional hired after the date of the SEA's determination, except under certain limited circumstances (see ESEA section 2141(c)(2)(B) and (C)).

Under this flexibility, an LEA is not required to develop an improvement plan or restrict the use of Federal education funds pursuant to such a plan, and an SEA is not required to provide the LEA the technical assistance that would be required to develop such a plan. Additionally, the SEA would not be required to enter into the agreement required by ESEA section 2141(c) with an LEA. In addition, an LEA is not restricted in its use of Title I, Part A funds for paraprofessionals, but still

must comply with the requirements with respect to paraprofessionals in ESEA section 1119(c) through (g).

This flexibility maintains the basic highly qualified teacher requirements included in section 1119 of the ESEA. Additionally, an SEA must still meet the requirement in ESEA section 1111(b)(8)(C) to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers. However, once more meaningful evaluation and support systems are in place in accordance with principle 3 (as described in the document titled *ESEA Flexibility*), an SEA may use the results of such systems to meet that requirement.

## **TRANSFERABILITY OF FUNDS**

### **B-19. How does this flexibility affect the ability of SEAs and LEAs to transfer funds from one eligible program to another?**

ESEA section 6123(a) authorizes an SEA to transfer up to 50 percent of the non-administrative funds available for State-level activities in a given fiscal year under the following (currently operating) programs:

- Improving Teacher Quality State Grants (ESEA section 2113(a)(3))
- Educational Technology State Grants (ESEA 2412(a)(1))
- 21<sup>st</sup> Century Community Learning Centers (21st CCLC) (ESEA section 5112(b))

An SEA may transfer these funds into its allocations under one or more of the listed programs or into its allocation under Title I, Part A of the ESEA.

Similarly, ESEA section 6123(b) authorizes an LEA that is not identified for improvement or corrective action to transfer up to 50 percent of the funds it receives in a given fiscal year under the following (currently operating) programs:

- Improving Teacher Quality State Grants (ESEA section 2121)
- Educational Technology State Grants (ESEA 2412(a)(2)(A))

An LEA may transfer funds into its allocations under one or more of these programs or into its allocation under Title I, Part A of the ESEA. An LEA that is identified for improvement may transfer only up to 30 percent of its funds under an eligible program and must use those funds for improvement activities consistent with ESEA section 1116(c) or transfer the funds into ESEA section 1003 for improvement activities. An LEA that is identified for corrective action may not transfer any funds.

Under this flexibility, an SEA may transfer up to 100 percent of its non-administrative funds from one or more of the three programs identified above to the other identified programs and to Title I, Part A in order to implement more effectively the principles of this flexibility and improve student achievement. Similarly, an LEA may transfer program funds from one of the two programs identified above to the other identified program and to Title I, Part A. This authority would apply to all LEAs notwithstanding the limitations on such transfers and the restrictions on the use of the transferred funds in ESEA section 6123(b)(1). To the extent that an SEA or LEA transfers funds into a single program, such as Title I, Part A, it gains considerable flexibility with respect to the use

of its funds as well as flexibility for reporting and accounting for the time and effort of staff whose salaries would then be supported from only one Federal source.

Under ESEA section 6123(a), an SEA may not transfer State administrative funds under the listed programs. To obtain flexibility with respect to the use of its administrative funds, however, an SEA still has the authority to consolidate funds for State administration if the SEA can demonstrate that the majority of its resources are derived from non-Federal sources as authorized by ESEA section 9201. This, too, reduces an SEA's burden to track its uses of funds to the specific program contributing those funds and to account for the time and effort of staff whose salaries would be then supported from the consolidated administrative funds pool.

**B-20. Does this flexibility permit an SEA or LEA to transfer funds out of Title I, Part A or out of programs not covered under ESEA section 6123?**

No. Under this flexibility, the Secretary will not waive ESEA section 6123(c), which prohibits an SEA or LEA from transferring funds out of Title I, Part A of the ESEA. Additionally, this flexibility does not permit an SEA or LEA to transfer funds out of programs not covered under ESEA section 6123, such as funds for specific populations of underserved students.

**B-21. In transferring funds, must an SEA or LEA comply with the notice requirements in ESEA section 6123(d)?**

No. Under ESEA section 6123(d), an SEA must notify the Department and an LEA must notify its SEA, not later than 30 days before the effective date of each transfer, of the program(s) from which funds are to be transferred; the amount and Federal fiscal year of the funds to be transferred; the program(s) to which the funds will be transferred; and the effective date for the transfer. These notice requirements do not apply under this flexibility for an SEA or an LEA. However, an SEA and an LEA must keep records to document each transfer.

**B-22. What are the responsibilities of an SEA or LEA for the provision of equitable services to private school children and teachers with respect to funds being transferred?**

Each program covered by the transferability authority is subject to equitable participation requirements, which may not be waived (see ESEA section 9401(c)(5)). Before an SEA or LEA may transfer funds, it must engage in timely and meaningful consultation with appropriate private school officials (ESEA sections 6123(e)(2) and 9501). With respect to the transferred funds, the SEA or LEA must provide private school students and teachers equitable services under the program(s) to which, and from which, the funds are transferred, based on the total amount of funds available to each program after the transfer.

**B-22a. Are there any limitations on an LEA's ability to transfer 100 percent of its Title II, Part A Improving Teacher Quality State Grant funds into another authorized program?**

Yes. ESEA section 9501(b)(3)(B) requires an LEA to provide, at a minimum, equitable services to private school teachers based on an amount of the LEA's overall allocation under Title II, Part A that is not less than the aggregate amount of FY 2001 funds that the LEA used for professional development under the former Eisenhower Professional Development program and Class-Size

Reduction program. Because the Department may not waive requirements related to the equitable participation of private school students and teachers (see ESEA section 9401(c)(5)), even if an LEA wishes to transfer most or all of its Title II, Part A funds into another authorized program, the law requires the LEA to reserve an amount of Title II, Part A funds for equitable services provided under that program for private school teachers and other educational personnel that is calculated on the assumption that the LEA is reserving for professional development under Title II, Part A at least as much as it did for FY 2001 under the two predecessor programs.

Assume, for example, that an LEA reserved a total of \$30,000 in FY 2001 funds under the Eisenhower Professional Development program and the Class-Size Reduction program for professional development. In order to provide equitable services in a subsequent school year consistent with ESEA section 9501(b)(3)(B), the LEA would need to assume that it would spend at least \$30,000 under Title II, Part A for professional development, including the amount of this \$30,000 that it would use to provide equitable services to private school teachers and other educational personnel. The amount available for equitable services would be proportionate to the participating private school children compared to the total number of public and participating private school children in the LEA based on the most current enrollment data. For example, if there are 100 children enrolled in participating private schools and 900 children enrolled in public schools in an LEA in the 2012–2013 school year, the LEA would need to spend at least \$3,000 ( $\$30,000 \div 1000 \times 100 = \$3,000$ ) to provide equitable services in the form of professional development to private school teachers and other educational personnel. This requirement applies even if the LEA is in a State that receives ESEA flexibility and wishes to transfer 100 percent of its Title II, Part A funds to another authorized program. In this case, the LEA could transfer all but \$3,000 of Title II, Part A funds to the other program, but would need to make the \$3,000 of Title II, Part A funds available for equitable services in the form of professional development to private school teachers and other educational personnel. (Added May 7, 2012)

## **SCHOOL IMPROVEMENT GRANTS**

### **B-23. What does the flexibility allow with respect to SIG funds?**

Under this flexibility, an LEA is eligible to apply for SIG funds to implement one of the four school intervention models defined in the SIG final requirements in a priority school even if that school is not in improvement and thus the LEA would not otherwise be eligible to receive SIG funds for the school. An SEA approved to implement this flexibility may award SIG funds above the amount needed for SIG continuation awards to an LEA with priority schools according to the rules that apply to Tier I and Tier II schools under the SIG final requirements.

## **EXPANDED LEARNING TIME**

### **B-24. What does this flexibility include with respect to expanded learning time?**

Under this flexibility, an SEA may request flexibility to permit an eligible entity to use funds under the 21st CCLC program to provide activities that support high-quality expanded learning time during an expanded school day, week, or year in addition to activities during non-school hours or periods when school is not in session (*i.e.*, before and after school or during summer recess). (Modified February 10, 2012)

### **B-24a. How does ESEA flexibility affect the 21st CCLC program?**

At an SEA’s option, the flexibility allows for an additional use of funds for the 21st CCLC program — to provide activities that support high-quality expanded learning time. Expanded learning time is the time that an LEA or school extends its normal school day, week, or year to provide additional instruction or educational programs for all students beyond the State-mandated requirements for the minimum number of hours in a school day, days in a school week, or days or weeks in a school year. Because the 21st CCLC statute restricts the use of program funds to support a broad range of academic enrichment and other activities during “non-school hours or periods when school is not in session,” and expanded learning time is, by definition, an extension of the normal school day, week, or year, an SEA would need the optional ESEA flexibility waiver to allow a 21st CCLC subgrantee to use 21st CCLC funds for activities that support expanded learning time.

With the exception of carrying out 21st CCLC activities during an expanded school day, week, or year, an eligible entity in a State that receives a waiver must comply with all other 21st CCLC requirements. In other words, other provisions of the 21st CCLC program remain unchanged, including the allocation of funds to SEAs by formula, the requirement that SEAs use 95 percent of their State formula grants to make competitive subgrants, and the entities eligible to compete for those subgrants (which consist of LEAs, community-based organizations, other public or private entities, and consortia of those entities). In a State that has been approved to implement ESEA flexibility, and that has requested the optional flexibility for the 21st CCLC program, eligible entities may submit applications to the SEA for activities that support expanded learning time and/or to operate programs before and after school and during summer recess as allowed under current requirements. For more information on the 21st CCLC program, please refer to ESEA sections 4201–4206 and the February 2003 non-regulatory guidance [available at <http://www2.ed.gov/programs/21stcclc/guidance2003.pdf>]. (Added February 10, 2012)

### **B-24b. When would ESEA flexibility for 21st CCLC funds take effect?**

ESEA flexibility would not affect current 21st CCLC subgrantees. Rather, this flexibility would take effect for local competitions conducted after an SEA receives ESEA flexibility. Thus, when an SEA runs its next 21st CCLC competition following the receipt of ESEA flexibility, it may solicit applications from eligible entities to provide activities that support high-quality expanded learning time in addition to activities conducted during non-school hours or periods when school is not in session. (Added February 10, 2012)

### **B-24c. What are some examples of ways an eligible entity might use 21st CCLC funds to provide activities that support expanded learning time?**

An eligible entity in a State that has been approved to implement ESEA flexibility (and has requested the optional flexibility for the 21st CCLC program) may use 21st CCLC funds to provide activities that support high-quality expanded learning time. The 21st CCLC activities may be carried out at any point in time during an extended school day, week, or year. For example, if an LEA lengthens its school day beyond the State minimum, the LEA or another eligible entity might use 21st CCLC funds to provide supplemental science, reading, civics, or art instruction or other supplemental academic enrichment activities to students in the morning or afternoon to allow

teachers time to collaborate or plan. Similarly, an LEA working with a community partner, might use 21st CCLC funds to extend its school week and incorporate enrichment activities, such as debate or college preparation, on either Saturday or a week day. Using 21st CCLC funds to support expanded learning time should not be just “more of the same”; it should involve careful planning by the eligible entity to ensure that the programs or activities will be used to improve student achievement and ensure a well-rounded education that prepares students for college and careers. (Added February 10, 2012)

**B-24d. Does the 21st CCLC supplement, not supplant provision apply to the use of 21st CCLC funds to support expanded learning time under ESEA flexibility?**

Yes, the 21st CCLC supplement, not supplant provision applies to the use of 21st CCLC funds to support expanded learning time under ESEA flexibility. Thus, an SEA receiving a waiver to permit an eligible entity to use 21st CCLC funds to provide activities that support expanded learning time programs must ensure that the 21st CCLC funds are used to supplement, and not supplant, Federal, State, local, or other non-Federal funds that, in the absence of the 21st CCLC funds, would be made available for programs and activities authorized under the 21st CCLC program (ESEA 4203(a)(9) and 4204(b)(2)(G)). (Added February 10, 2012)

**B-25. What does high-quality expanded learning time look like?**

Supporting activities to provide high-quality expanded learning time might include:

- Adding significantly more time by expanding the school day, school week, or school year to increase learning time for all students;
- Using the additional time to support a well-rounded education that includes time for academics and enrichment activities;
- Providing additional time for teacher collaboration and common planning; and
- Partnering with one or more outside organizations, such as a nonprofit organization, with demonstrated experience in improving student achievement.

## C. GUIDANCE REGARDING PRINCIPLES IN ESEA FLEXIBILITY

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This section provides guidance on the principles that apply as part of this flexibility. The document titled *ESEA Flexibility* contains definitions for the following terms used in this section: (1) college- and career-ready standards; (2) focus school; (3) high-quality assessment; (4) priority school; (5) standards that are common to a significant number of States; (6) reward school; (7) State network of institutions of higher education (IHEs); (8) student growth; and (9) turnaround principles.

### SEA ADOPTS AND IMPLEMENTS COLLEGE- AND CAREER-READY STANDARDS AND ALIGNED ASSESSMENTS

#### *Adopting College- and Career-Ready Standards*

#### **C-1. To receive this flexibility, what must an SEA do with respect to adopting college- and career-ready standards?**

To receive this flexibility, an SEA must have formally adopted college- and career-ready standards in at least reading/language arts and mathematics by the time the SEA requests this flexibility.

#### **C-2. What evidence must an SEA submit to demonstrate that its proposed standards are college- and career-ready?**

To meet the principles of this flexibility, and consistent with ESEA section 1111(e), an SEA must submit to the Department for review and approval evidence that it has formally adopted college- and career-ready standards by the time it submits its flexibility request.

If an SEA has adopted standards that are common to a significant number of States, the SEA must provide evidence that the State has formally adopted the standards consistent with the State's standards adoption process, such as Board minutes, legislation, or the signature of the State superintendent or Chief State School Officer.

If an SEA has adopted college- and career-ready standards that have been approved and certified by a State network of IHEs, the SEA must provide both of the following:

- Evidence that the State has formally adopted the standards consistent with the State's standards adoption process, such as Board minutes, legislation, or the signature of the State superintendent or Chief State School Officer.
- A copy of the memorandum of understanding or letter from the State network of IHEs certifying that students who meet the standards will not need remedial coursework at the postsecondary level.

#### **C-3. If an SEA is adopting college- and career-ready standards consistent with part two of the definition, how might the SEA involve external stakeholders in the process?**

While college- and career-ready standards consistent with part two of the definition must be approved by a State network of IHEs, an SEA might also reach out to other key stakeholders in the development of those standards. This process could include consultation with various groups to ensure that students who meet those standards are prepared for successful careers, such as teachers, parents, and business organizations.

**C-4. When an SEA adopts college- and career-ready standards, to which LEAs must those standards apply?**

Consistent with ESEA section 1111(b)(1)(B), an SEA’s college- and career-ready standards must apply to all LEAs in the State.

***Implementing College- and Career-Ready Standards***

**C-5. To receive this flexibility, what must an SEA do with respect to implementing college- and career-ready standards?**

To receive this flexibility, an SEA must include in its request a high-quality plan that includes specific transition activities to implement its college- and career-ready standards statewide in at least reading/language arts and mathematics for all schools and students no later than the 2013–2014 school year. Implementing college- and career-ready standards means that teaching and learning aligned with such standards is taking place in all public schools in the State for all students, including English Learners, students with disabilities, and low-achieving students.

**C-6. What is an SEA’s plan to implement college- and career-ready standards likely to include?**

In developing a high-quality plan to transition to college- and career-ready standards, an SEA should consider how best to inform educators and the public in the State about the new standards; prepare educators to teach to the new standards; and support instruction aligned with the new standards, in ways that are appropriate in the State’s context. An SEA’s transition plan to implement college- and career-ready standards would likely include:

- An assessment of the extent of alignment between the State’s current content standards and the college- and career-ready standards. This could include a “gap analysis” or “crosswalk” to determine similarities and differences between the State’s existing content standards and its college- and career-ready standards.
- An analysis of the linguistic demands of the State’s college- and career-ready standards that informs the development of English language proficiency (ELP) standards corresponding to the college- and career-ready standards and ensures that English Learners will have the opportunity to achieve to the college- and career-ready standards.
- An analysis of the learning and accommodation factors necessary to ensure that students with disabilities will have the opportunity to achieve to the college- and career-ready standards.
- Outreach and dissemination of the college- and career-ready standards to key stakeholders, including LEAs, educators, administrators, families, and IHEs, to familiarize them with the purpose and content of the new standards. This could include sharing information on the similarities and differences between the State’s existing content standards and its college- and career-ready standards.
- Professional development and other supports to prepare teachers to teach all students, including English Learners, students with disabilities, and low-achieving students, to the new

college- and career-ready standards and to prepare principals to provide strong, supportive instructional leadership based on the new standards. Such professional development might include strategies for teachers and principals to use instructional materials aligned with the new standards, evaluate student work relative to the new standards, and use multiple measures of student performance data (*e.g.*, data from formative, benchmark, and summative assessments) to inform instruction.

- Development and dissemination to all LEAs of high-quality instructional materials that are aligned with the new college- and career-ready standards and are designed to support the teaching and learning of all students, including English Learners, students with disabilities, and low-achieving students.
- Expanding access to college-level courses or their prerequisites, dual enrollment courses, or accelerated learning opportunities.
- Working with the State’s IHEs and other teacher and principal preparation programs to better prepare (1) incoming teachers to teach all students to the new college- and career-ready standards, including English Learners, students with disabilities, and low-achieving students; and (2) incoming principals to provide strong, supportive instructional leadership on teaching to the new college- and career-ready standards.
- Evaluating and using the State’s current assessments prior to the implementation of college- and career-ready assessments to support the transition to college- and career-ready standards for students and educators. See C-7.

**C-6a. As part of its plan to transition to and implement college- and career-ready standards, may an SEA include activities related to improving alignment of preschool standards with its college- and career-ready standards?**

Yes. In order to ensure that students entering kindergarten are prepared to succeed in meeting the State’s college- and career-ready standards, an SEA may wish to better align its preschool standards with its new college- and career-ready standards. These activities would support an SEA’s comprehensive plan to transition to and implement college- and career-ready standards, and might include activities such as an analysis of the alignment between the State’s current preschool standards and the State’s new college- and career-ready standards or outreach to early learning programs in the State regarding the new college- and career-ready standards. (Added November 10, 2011)

**C-7. How might an SEA use its current assessments prior to the implementation of college- and career-ready assessments to support the transition to college- and career-ready standards for students and teachers?**

An SEA might evaluate its current assessments and increase the rigor of those assessments and their alignment with the State’s college- and career- ready standards prior to the implementation of college- and career-ready assessments to better prepare students and teachers for the new assessments by doing one of the following:

- Raising the State’s academic achievement standards based on the current assessments to ensure that those standards reflect a level of postsecondary readiness or are being increased over time to that level of rigor. For example, the SEA might compare the State’s current

achievement standards to a measure of postsecondary readiness by back-mapping from college entrance requirements or remediation rates, analyzing the relationship between proficient scores on the State assessments and the ACT or SAT scores accepted by most of the State's four-year public IHEs, or conducting National Assessment of Educational Progress (NAEP) mapping studies to identify more appropriate achievement standards.

- Augmenting or revising the current State assessments by adding questions, removing questions, or varying formats in order to better align those assessments with the State's college- and career-ready standards.
- Implementing another strategy to increase the rigor of the current assessments, such as using the "advanced" performance level instead of the "proficient" performance level on the State assessments as the goal for individual student performance, or using college-preparatory assessments or other advanced tests on which IHEs grant course credits to entering college students to determine whether students are prepared for postsecondary success.

**C-8. By when does an SEA need to implement college- and career-ready standards?**

An SEA and all its LEAs must implement college- and career-ready standards no later than the 2013–2014 school year.

**High-Quality Assessments**

**C-9. To receive this flexibility, what must an SEA do with respect to assessing students based on college- and career-ready standards?**

To receive this flexibility, an SEA must have developed, or have a plan to develop, annual, statewide high-quality assessments in at least reading/language arts and mathematics for grades three through eight and at least once in high school that are aligned with its college- and career-ready standards and that measure student growth. An SEA must pilot such assessments no later than the 2013–2014 school year and must administer such assessments on an annual basis beginning no later than the 2014–2015 school year.

**C-10. Must an SEA developing and implementing high-quality assessments ensure that accommodations will be provided to students with disabilities and English Learners?**

Yes, under this flexibility, in developing and implementing high-quality assessments aligned with the State's college- and career-ready standards, an SEA must ensure that appropriate accommodations are available and provided to students with disabilities and English Learners, consistent with ESEA section 1111(b)(3)(C)(ix). An SEA's high-quality assessments must assess all students, including students with disabilities and English Learners.

**C-11. How may an SEA demonstrate that it will assess students based on college- and career-ready standards?**

An SEA whose State is a member of one of the two State consortia that received a grant under the Race to the Top Assessment competition must include the State's MOU under that competition in its request for this flexibility. An SEA whose State is not a member of one of the two State

consortia and that has not developed and administered high-quality assessments must submit a plan to develop, pilot, and administer, by the 2014–2015 school year, high-quality assessments that are aligned with college- and career-ready standards and measure student growth in at least reading/language arts and mathematics in grades three through eight and at least once in high school in all its LEAs. An SEA that has already developed and administered high-quality assessments in all its LEAs must provide evidence that it has submitted these assessments to the Department for peer review or a timeline showing when it will submit the assessments to the Department for peer review.

**C-12. Must an SEA’s high-quality assessments aligned with college- and career-ready standards be approved by the Department?**

Yes. Consistent with ESEA section 1111(e), an SEA must submit evidence of its high-quality assessments based on college- and career-ready standards to the Department for review and approval.

**C-13. To receive this flexibility, once an SEA has adopted high-quality assessments, it must take into account student growth in its differentiated recognition, accountability, and support system. What factors does the Department anticipate taking into account when it reviews growth targets for students?**

The Department anticipates that it will approve only growth models that incorporate aggressive growth targets that would result in all students, including students with disabilities and English Learners, meeting the State’s college- and career-ready standards within a specified number of years. Consistent with the Department’s prior practice with respect to growth models, the Department anticipates that it will approve only growth targets that require students to meet State standards within four or fewer years or by high school graduation, whichever comes sooner, and that do not take into account student background characteristics. The Department intends to issue additional guidance regarding its review of growth models closer to the 2014–2015 school year when SEAs are required to adopt high-quality assessments that measure student growth. With respect to high-quality assessments and growth models for accountability purposes, “student growth” refers to the change in an individual student’s score on such assessments between two or more points in time, consistent with the definition in the document titled *ESEA Flexibility*.

***English Language Proficiency Standards and Assessments***

**C-14. To receive this flexibility, what must an SEA do with respect to ELP standards and assessments?**

To receive this flexibility, an SEA must provide an assurance that it will adopt ELP standards that correspond to the State’s college- and career-ready standards, consistent with the requirement in ESEA section 3113(b)(2), no later than the 2013–2014 school year, and that reflect the academic language skills necessary to access and meet the new college- and career-ready standards. In addition, an SEA must provide an assurance that it will develop and administer high-quality ELP assessments aligned with the State’s ELP standards, consistent with the requirements in ESEA sections 1111(b)(7), 3113(b)(2), and 3122(a)(3)(A)(ii).

### *Alternate Assessments for Students with Disabilities*

#### **C-15. How are alternate assessments for students with disabilities included in an SEA's high-quality assessments?**

An SEA's high-quality assessments must provide for alternate assessments based on grade-level academic achievement standards or alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities, consistent with 34 C.F.R. § 200.6(a)(2). Such assessments must be aligned with the SEA's college- and career-ready standards, and an SEA may provide for both types of alternate assessments. If the SEA's alternate assessments are based on alternate academic achievement standards, those standards must meet the requirements of 34 C.F.R. § 200.1(d). Because the high-quality assessments that an SEA is developing will better measure the achievement of students with disabilities, the SEA will no longer be able to use alternate assessments based on modified academic achievement standards. Accordingly, the students with disabilities who may currently be eligible for alternate assessments based on modified academic achievement standards must be included in the high-quality assessments based on grade-level academic achievement standards that an SEA will administer no later than the 2014–2015 school year. In developing its high-quality assessments, the SEA should consider how its general assessments will be accessible to all students to minimize participation in alternate assessments.

Consistent with 34 C.F.R. § 200.1(f)(1), an SEA that administers alternate assessments based on alternate academic achievement standards must: (1) establish and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining students with the most significant cognitive disabilities who will be assessed based on alternate academic achievement standards; (2) inform IEP teams that students eligible to be assessed based on alternate academic achievement standards may be from any of the disability categories listed in the IDEA; (3) provide to IEP teams a clear explanation of the difference between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on the student's education resulting from taking an alternate assessment based on alternate academic achievement standards; and (4) ensure that parents of students selected to be assessed based on alternate academic achievement standards under the State's guidelines are informed that their child's achievement will be measured based on alternate academic achievement standards.

### *Alignment with Postsecondary Expectations*

#### **C-16. How can an SEA report college-going and college credit-accumulation rates for each high school in the State?**

At the time of submitting its request for this flexibility, an SEA must submit an assurance that, by the year following implementation of college- and career-ready standards but no later than the 2014–2015 school year, it will report annually to the public on college-going and college credit-accumulation rates, as defined under State Fiscal Stabilization Fund (SFSF) Indicators (c)(11) and (c)(12), for all students and subgroups of students in each LEA and each public high school in the State. To meet the in-State college-going reporting requirements in Indicator (c)(11), the SEA should work with its statewide longitudinal data system or other third-party verified data systems.

To report credit-accumulation rates at in-State public colleges and universities as outlined in SFSE Indicator (c)(12), the SEA may work with its statewide longitudinal data system or a State network of institutions of higher education.

## **STATE-DEVELOPED DIFFERENTIATED RECOGNITION, ACCOUNTABILITY, AND SUPPORT SYSTEM**

### ***Providing Differentiated Recognition, Accountability, and Support***

#### **C-17. What are an SEA’s responsibilities with regard to providing differentiated recognition, accountability, and support?**

An SEA requesting this flexibility must develop and implement a State-based accountability system for all of its LEAs and all Title I schools that provides differentiated recognition, accountability, and support based on the schools’ performance, including the academic achievement (in at least reading/language arts and mathematics) and graduation rates of all students and all subgroups of students, and also based on how such performance has changed over time. In order to meet these requirements, a State-based differentiated recognition, accountability, and support system must include:

- Ambitious but achievable AMOs in at least reading/language arts and mathematics for the State and all LEAs, schools, and subgroups;
- The identification of reward schools, and providing such schools with recognition or rewards;
- The identification of a number of schools equal to at least 5 percent of Title I schools as priority schools, ensuring that LEAs implement interventions aligned with the turnaround principles in such schools, and criteria for determining when a school exits priority status;
- The identification of at least an additional 10 percent of Title I schools as focus schools, ensuring that LEAs implement interventions in such schools, and criteria for determining when a school exits focus status;
- Incentives and supports for other Title I schools that are not making progress in improving student achievement and narrowing achievement gaps, based on the SEA’s new AMOs and other measures;
- Building SEA, LEA, and school capacity to improve student learning in all schools and, in particular, in low-performing schools and schools with the largest achievement gaps.

While an SEA must include the specific components above in its system of differentiated recognition, accountability, and support, an SEA has considerable flexibility to design innovative systems that are tailored to the needs of its State, LEAs, schools, and students. An SEA’s system is not limited to these components, and the Department encourages an SEA to develop a coherent and comprehensive system that will improve student achievement, close achievement gaps, increase the quality of instruction, and support continuous improvement for all schools.

#### **C-18. In addition to meeting the requirements related to priority and focus schools, how might an SEA identify additional Title I schools with specific needs for academic support and improvement?**

Although this flexibility requires an SEA to identify and take certain actions with regard to priority

and focus schools, it also gives the SEA flexibility to develop its own system of differentiated recognition, accountability, and support for other Title I schools to ensure that all students, including English Learners, students with disabilities, and low-achieving students are meeting college- and career-ready standards. An SEA should use this flexibility to identify and determine the appropriate supports for schools by using current data on student achievement on State assessments (including whether a school has met the SEA's new ambitious but achievable AMOs) and graduation rates, for all subgroups of students identified in ESEA section 1111(b)(2)(C)(v)(II), and considering how performance on these measures has changed over time. For example, an SEA might identify additional schools based on a combination of AYP — such as the number or percentage of subgroups that missed AYP based on the SEA's new AMOs or the degree by which subgroups in the school missed AYP — and school rankings on the State list used to identify priority and focus schools, or it might identify additional schools based on the feeder patterns of priority and focus schools. Additionally, an SEA has the flexibility to use multiple measures of school performance, such as indicators of school climate, student attendance, or credit accumulation, to determine the needs of schools other than reward schools, priority schools, and focus schools. An SEA also might use a pre-existing State ranking or grading system to inform the targeting of differentiated support for additional Title I schools in order to align its system under this flexibility with its State system.

**C-19. May an SEA include assessments in subjects other than reading / language arts and mathematics as part of its differentiated recognition, accountability, and support system?**

Yes, as long as those assessments meet certain requirements. Any assessments that are part of an SEA's differentiated recognition, accountability, and support system must (1) be administered statewide; (2) include all students, including by providing appropriate accommodations for English Learners and students with disabilities, as well as alternate assessments based on grade-level academic achievement standards or alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities, consistent with 34 C.F.R. § 200.6(a)(2); and (3) be valid and reliable for use in the SEA's differentiated recognition, accountability, and support system. As part of its request for this flexibility, an SEA must provide an assurance that any assessments in subjects other than reading/language arts and mathematics included in its proposed system (if any) meet these criteria and that the SEA has technical documentation supporting this assurance.

**C-20. What accountability information must an SEA and its LEAs include on their report cards?**

Under this flexibility, an SEA and its LEAs must include the identification of schools under the SEA's new differentiated recognition, accountability, and support system, including reward schools, priority schools, and focus schools, in their annual report cards. However, an SEA and its LEAs will no longer have to report on LEAs and schools that have been identified for improvement, corrective action, or restructuring since no such LEAs or schools will be identified. An SEA and Title I LEAs must still meet all of the other statutory State and LEA report card requirements.

**C-21. May an SEA incorporate its existing State accountability system into its comprehensive plan for implementing this flexibility?**

Yes. Although an SEA must meet certain principles as part of this flexibility, the SEA has significant flexibility with respect to how it will implement the waivers and meet the principles. This flexibility includes the flexibility to use or revise an existing State accountability system so the State is implementing a single accountability system, so long as, in doing so, the SEA can still meet the principles of this flexibility.

### *Identifying Categories of Schools*

#### **C-22. What schools must an SEA identify as part of its differentiated recognition, accountability, and support system under this flexibility?**

As described in C-17, an SEA requesting this flexibility must identify at least three categories of schools: (1) reward schools; (2) priority schools; and (3) focus schools. The definition of each of these terms is set forth in the document titled *ESEA Flexibility*.

#### **C-23. For purposes of this flexibility, from among which pool of schools must an SEA identify reward schools, priority schools, and focus schools?**

An SEA must identify its reward schools, priority schools, and focus schools from among all Title I schools in the State. Unlike persistently lowest-achieving schools under the SIG program, which are selected primarily from Title I schools identified for improvement, corrective action, or restructuring, an SEA must include all Title I schools in the pool from which priority schools and focus schools are selected.

In addition, an SEA may also identify Title I-eligible high schools with graduation rates less than 60 percent over a number of years as priority schools.

#### **C-23a. How might an SEA ensure that schools from across all grade spans are fairly represented in its lists of reward schools, priority schools, and focus schools?**

An SEA is not required to take into account grade spans in identifying reward schools, priority schools, and focus schools, but the Department encourages an SEA to structure its identification process so that a mix of elementary, middle, and high schools are included in each category of identified schools. For example, an SEA might identify elementary, middle, and high schools based on the relative proportion of such schools in the State. (Added November 10, 2011)

#### **C-23b. May an SEA identify the same school as both a priority school and a focus school?**

No. Although a school may fit an SEA's definition of both a priority school and a focus school, an SEA may identify that school only as a priority school or as a focus school. For example, an SEA has the flexibility to identify a Title I-participating high school with a graduation rate less than 60 percent over a number of years as either a priority school or a focus school. However, the SEA may identify such a school in only one of these two categories. (Added November 10, 2011)

#### **C-23c. Principle 2 requires an SEA to identify a number of schools equal to five percent of the State's Title I schools as priority schools and a number of schools equal to 10 percent of the State's Title I schools as focus schools. Do these numbers represent**

**the exact number of schools that must be identified or are they the minimum number of schools that must be identified?**

A number of schools equal to five percent of the State's Title I schools and a number of schools equal to 10 percent of the State's Title I schools are the minimum number of priority schools and focus schools, respectively, that an SEA must identify to meet principle 2 (as described in the document titled *ESEA Flexibility*). An SEA is free to identify additional schools as priority or focus schools. An SEA also has flexibility to incorporate its lists of priority and focus schools into a broader system of identification for all schools. For example, an SEA might choose to identify the lowest-performing five percent of all schools in the State, regardless of Title I status, so long as this identification includes a number of schools meeting the definition of priority schools that is at least five percent of the number of Title I schools in the State. However, nothing in the flexibility gives an SEA or its LEAs the authority to use Title I funds in non-Title I schools. (Added November 10, 2011)

**C-23d. May Title I, Part A funds be used in a Title I-eligible high school that has had a graduation rate less than 60 percent over a number of years?**

Yes, under certain conditions. Consistent with the definition of "priority school," an SEA may identify a Title I-eligible high school as a priority school if it has had a graduation rate less than 60 percent over a number of years. If an SEA identifies such a high school as a priority school, but the school's poverty percentage is not sufficiently high for the school to be served under ESEA section 1113, the SEA may request as part of ESEA flexibility an additional waiver of ESEA section 1113(a)(3)-(4) and (c)(1) to enable the LEA to serve the school with Title I, Part A funds, if it so chooses. In this situation, the LEA could use Title I, Part A funds to provide interventions in the school. If the LEA uses Title I, Part A funds to serve the school, the school would become a Title I-participating school. (Added January 5, 2012)

**C-23e. May an SEA include non-Title I-participating schools in its differentiated recognition, accountability, and support system?**

Yes. However, Title I, Part A funds may be used only in Title I-participating schools. Although the Department will consider requests for a waiver of ESEA section 1113(a)(3)-(4) and (c)(1) that would allow an LEA to use Title I, Part A funds in Title I-eligible schools that are included within the definition of priority schools (*i.e.*, Title I-eligible high schools that have had a graduation rate below 60 percent over a number of years), the Department does not intend to expand the scope of that waiver to include other Title I-eligible, but not participating, schools. (Added January 5, 2012)

**C-24. May an SEA use the results of assessments in subjects other than reading/language arts and mathematics to identify reward schools, priority schools, and focus schools?**

Yes. An SEA may use the results of any assessments that are part of its differentiated recognition, accountability, and support system to identify reward schools, priority schools, and focus schools. However, the Department expects that the SEA will give significant weight to the results of assessments in reading/language arts and mathematics. Additionally, as explained in C-19, an SEA must provide an assurance that assessments in subjects other than reading/language arts and mathematics (if any) meet certain criteria to be included in the SEA's differentiated recognition, accountability, and support system.

**C-25. Must an SEA identify its reward schools, priority schools, and focus schools prior to requesting this flexibility?**

Yes. An SEA must submit the name and National Center for Education Statistics (NCES) identification number for each school that the SEA has identified, as well as the SEA's methodology for identifying reward, priority, and focus schools, in its request for this flexibility.

**C-25a. How can an SEA meet the requirement to submit its lists of reward, priority, and focus schools as part of its request for flexibility?**

An SEA has three options for how it may meet the requirement to submit its lists of reward, priority, and focus schools as part of its request for flexibility. First, an SEA may submit to the Department final lists of reward, priority, and focus schools, including the LEA name, school name, National Center for Education Statistics (NCES) school identification number, and reason for identification. Second, an SEA may submit preliminary lists of reward, priority, and focus schools with this information. Third, an SEA may submit a preliminary list of reward, priority, and focus schools that include the reason for identification, but have the LEA names, school names, and NCES identification numbers redacted. If an SEA submits preliminary lists or lists with redacted information, it must also submit an explanation of why it is submitting such lists and the date by which it will submit the final list with school names. An SEA that requests flexibility in Window 1 or Window 2 may take this approach, for example, in order to use achievement data from assessments administered in the 2011–2012 school year to generate final lists of priority and focus schools, just as an SEA that requests flexibility in Window 3 may take this approach in order to use achievement data from assessments administered in the 2012–2013 school year to generate final lists. An SEA that receives flexibility in Window 1 or Window 2 should keep in mind that its LEAs must implement interventions in all focus schools beginning in the 2012–2013 school year and must implement interventions in all priority schools by the 2014–2015 school year. Similarly, an SEA that requests flexibility in Window 3 should keep in mind that its LEAs must implement interventions in all focus schools beginning in the 2013–2014 school year and must implement interventions in all priority schools by the 2014–2015 school year. Delaying the submission of final lists may make it more difficult for an SEA and its LEAs to meet the required timelines, which may cause the Department to not approve, or to rescind approval of, the SEA's request for flexibility. If an SEA that submits preliminary lists or lists with redacted information meets all of the principles of the flexibility, the Department may conditionally approve the SEA's request subject to submission of final lists. (Added January 5, 2012, Modified August 3, 2012)

**C-25b. May an SEA update its lists of reward, priority, and focus schools during the period of the flexibility in order to use more recent achievement data?**

Yes, during the period of ESEA flexibility, an SEA may update its lists of reward, priority, and focus schools identified for the first school year subsequent to flexibility approval in order to use more recent achievement data. An SEA's discretion to update its lists, however, depends on the category of identified schools.

- *Reward schools*: An SEA must identify reward schools annually, so it must update its list of reward schools each year.

- *Priority schools:* An SEA might decide to use the list of priority schools that the SEA included with its request for the duration of ESEA flexibility because (1) LEAs must implement 3-year interventions in their priority schools; and (2) the SEA must include in its request a timeline ensuring that LEAs with one or more priority schools begin implementing meaningful interventions aligned with the turnaround principles in each of those schools no later than the 2014–2015 school year. For an SEA that decides not to update its list, the SEA’s list of priority schools would remain the same unless some schools meet the SEA’s criteria for exiting priority status before they begin to implement interventions in accordance with the SEA’s timeline. The SEA may remove such schools from its list and need not replace them with other schools. If an SEA updates its list of priority schools for subsequent school years, it must include on its updated list those schools that have begun to implement interventions. If a priority school has met the SEA’s criteria for exiting priority status, the SEA may count the school towards the number of priority schools it must identify on its updated list.
- *Focus schools:* Unlike priority schools, there is no requirement that a focus school implement interventions over a specific number of years. An SEA must ensure that, annually, its Title I schools that are identified as focus schools implement appropriate interventions. If the SEA does not update its list of focus schools, the schools on the list the SEA included with its request would continue to implement interventions each year for the duration of ESEA flexibility unless they meet the SEA’s criteria for exiting focus status. If, however, the SEA updates its list for 2013–2014 or 2014–2015, it would identify a new list of schools representing 10 percent of Title I schools in the State, all of which would implement appropriate interventions in 2013–2014 or 2014–2015, respectively. If a focus school has met the SEA’s criteria for exiting focus status, the SEA may count the school towards the number of focus schools it must identify on its updated list.  
(Added January 5, 2012, Modified August 3, 2012)

**C-25c. If an SEA updates its lists of priority and focus schools during the waiver period, should its revised lists reflect any changes in the number of Title I-participating schools served by its LEAs?**

No. An SEA that updates its lists of priority and focus schools during the waiver period should identify the same number of priority and focus schools that it compiled at the time of its request for ESEA flexibility, even if the total number of Title I-participating schools in the State changes.  
(Added January 5, 2012)

**C-26. How does an SEA determine the number of schools that must be identified as priority schools?**

The number of schools that an SEA that receives ESEA flexibility in Window 1 or Window 2 must identify as priority schools equals five percent of all Title I schools in the State, based on the number of schools participating in Title I in the 2010–2011 school year. The number of schools that an SEA that requests ESEA flexibility in Window 3 must identify as priority schools equals five percent of all Title I schools in the State, based on the number of schools participating in Title I in the 2011–2012 school year. An SEA may count Tier I or Tier II schools that are using SIG funds to fully implement one of the four SIG models as priority schools, and must identify the additional priority schools based on their achievement on the State’s assessments (category 1) or based on their

graduation rate (category 2). An SEA has flexibility in determining the particular mix of schools from category 1 and category 2 that make up its list of priority schools, but the Department encourages an SEA to include schools from both categories to ensure that the SEA and its LEAs are implementing meaningful interventions in the lowest-performing schools in the State.

For example, if a State has 400 Title I schools, the SEA must identify at least 20 schools as priority schools. If the State has eight Tier I or Tier II schools that are using SIG funds to fully implement one of the four SIG models, it may count those eight schools among the 20 and would need to identify at least an additional 12 Title I schools as priority schools. The SEA may identify the additional 12 schools based on their achievement on the State's assessments (category 1) or based on their graduation rate (category 2). Regardless of the categories from which the schools are selected, all 20 schools would make up the SEA's list of priority schools for purposes of this flexibility. (Modified August 3, 2012)

### **C-26a. How does an SEA identify priority schools for the purpose of this flexibility?**

An SEA must identify its priority schools from among any one or more of three categories of schools:

- (1) Title I schools that are among the lowest five percent of Title I schools in the State based on the achievement of the "all students" group in terms of combined proficiency on the statewide assessments that are part of the SEA's differentiated recognition, accountability, and support system and have demonstrated a lack of progress on those assessments over a number of years in the "all students" group;
- (2) Title I-participating or Title I-eligible high schools with a graduation rate less than 60 percent over a number of years; and
- (3) Tier I or Tier II schools under the SIG program that are using SIG funds to implement a school intervention model.

As noted in C-26, an SEA has flexibility to determine the number of schools in each of these categories that it identifies as priority schools, but must identify a total number of priority schools that equals at least five percent of the State's Title I schools. An SEA is not required to identify schools in all three categories as priority schools; in determining the categories from which it will identify priority schools, an SEA should take into account the overall performance of its schools and whether schools in one category or another represent those that are most in need of additional assistance. For example, an SEA may wish to identify schools only in categories 1 and 2 as priority schools, and not count Tier I or Tier II schools already implementing a school intervention model as priority schools, since Tier I and Tier II schools may not be in need of additional assistance.

In identifying schools in categories 1 and 2, an SEA may choose to use the same methodology to identify priority schools that it used to identify Tier I and Tier II schools for the purposes of the SIG program, and simply apply that methodology to the broader pool of all Title I schools (rather than only Title I schools identified for improvement, corrective action, or restructuring as required for SIG). An SEA may also develop a different methodology, so long as it incorporates all of the required elements (*i.e.*, achievement of the "all students" group on statewide assessments, combined, and lack of progress). As part of its request for flexibility, the SEA must describe its methodology for identifying its priority schools. (Added November 10, 2011)

**C-27. Are the priority schools that an SEA must identify under this flexibility the same as the persistently lowest-achieving (PLA) schools that the SEA identified for the purpose of the SIG program?**

Not necessarily. In many cases, the schools on a State's PLA list will also be identified as priority schools, since a school that is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring will likely also be among the lowest five percent of all Title I schools in the State. Additionally, PLA schools that are receiving SIG funds to fully implement a school intervention model may be identified as priority schools, even if they are not among the lowest five percent of all Title I schools in the State. However, it is possible that priority schools that are not identified for improvement, corrective action, or restructuring would not be identified as PLA schools, because the pools of schools from which the schools are drawn are different.

**C-28. How may an LEA implement interventions aligned with the turnaround principles in a priority school that is operating a targeted assistance program or other interventions in a focus school that is operating a targeted assistance program?**

This flexibility enables a priority school operating a targeted assistance program to operate a schoolwide program so it can use Title I, Part A funds to implement interventions aligned with the turnaround principles, which would affect the entire educational program of the school in which they are implemented. However, only focus schools implementing interventions that are based on the needs of the students in the school and designed to enhance the entire educational program of the school, and not just the achievement of individual students, would be eligible for the waiver of the schoolwide program poverty threshold.

A priority school or a focus school in which an LEA implements a waiver to enable the school to operate a schoolwide program or a priority or focus school that is operating a schoolwide program must meet all of the programmatic requirements of ESEA section 1114. In the case of priority schools in particular, because the provisions of ESEA section 1114 and the interventions being implemented are intended to improve the education of low-achieving students by upgrading the instructional program of an entire school, simply by implementing interventions aligned with the turnaround principles an LEA would likely be complying with most, if not all, of the requirements for a schoolwide program.

**C-29. Must an SEA publicly report its lists of reward schools, priority schools, and focus schools?**

Yes. At the time an SEA is approved to implement this flexibility, it must publicly report its lists of reward schools, priority schools, and focus schools. Annually thereafter it must publicly recognize its reward schools. Also see C-20 regarding annual report card requirements.

**C-30. How should an SEA provide public notice regarding a school's identification as a reward, priority, or focus school?**

An SEA has flexibility to determine how it will provide public notice regarding a school's identification as a reward, focus, or priority school. For example, an SEA might publish its lists of

reward, priority, and focus schools on its website or in State report cards. Additionally, but not in place of publishing its lists, an SEA could provide notice to parents of students attending reward, priority, and focus schools of the school's designation. An SEA could provide this notice directly to parents or work with the LEAs within which these schools are located to provide such notice. An SEA and LEA may want to consider using multiple methods of providing this notice to help maximize parental awareness. An SEA should work with its LEAs to determine the most effective means of disseminating this information to parents. Also see C-20 regarding annual report card requirements.

### **Recognizing and Rewarding Reward Schools**

#### **C-31. Must an SEA provide rewards to all reward schools?**

No. An SEA must recognize all reward schools, but it has the discretion to decide whether, and if so, how, to reward them. For example, an SEA might take into account school poverty levels in rewarding high-performing schools. The Department encourages SEAs to consider giving priority for rewards to high-progress schools and schools with higher poverty levels. In addition, the SEA should ensure that any criteria for rewards are shared with all LEAs and schools.

#### **C-32. What are examples of the ways in which an SEA may recognize or reward schools?**

Examples of appropriate recognition and rewards include: public recognition including visits by senior State officials such as the chief State school officer, the Governor, or another high-ranking State official; sending press releases to local media outlets; banners or plaques; special professional development opportunities; and financial rewards, including financial support to enable such a school to partner with and improve a lower-performing school. As noted in B-16, an SEA may use funds reserved under ESEA section 1117(c)(2)(A) to provide financial rewards to such schools.

#### **C-33. When must an SEA begin providing recognition and, if it chooses, rewards to reward schools?**

An SEA must provide annual recognition and, if it chooses, rewards to reward schools beginning with the schools that are identified as reward schools in the SEA's request for this flexibility. The recognition and, if the SEA chooses, rewards that are provided to these schools need not be provided during the school year in which the flexibility is requested, but should be provided as soon as is practicable thereafter. (Modified August 3, 2012)

### **Implementing Interventions in Priority Schools**

#### **C-34. What interventions must an LEA implement in its priority schools?**

An LEA that has a priority school must implement interventions aligned with the turnaround principles, which are defined in the document titled *ESEA Flexibility*. An LEA may also implement any of the four SIG models — the turnaround model, the restart model, the school closure model, and the transformation model — in its priority schools.

**C-34a. May an SEA incorporate activities to strengthen or expand access to early learning programs as part of implementing interventions that meet the turnaround principles in priority schools?**

Yes. For example, as part of meeting the turnaround principle regarding redesigning the school day, week, or year to include additional time for student learning and teacher collaboration, an LEA may choose to expand the school program to offer full-day kindergarten or high-quality preschool. Similarly, as part of meeting the turnaround principle regarding strengthening the school's instructional program based on student needs, an LEA may choose to improve the school's kindergarten or preschool program so that it is research-based, rigorous, and aligned with State standards. (Added November 10, 2011)

**C-35. How may an LEA's interventions in priority schools meet the turnaround principle regarding redesigning the school day, week, or year to include additional time for student learning and teacher collaboration?**

An LEA has flexibility in determining how to meet the turnaround principle regarding redesigning the school day, week, or year in a priority school. An LEA should examine the current use of time in the school and redesign the school day, week, or year based on the particular needs of the school. For example, an LEA may choose to add time to the school day or add days to the school year. However, an LEA is not required to add time; it may also redesign the school day by, for example, moving to block scheduling to reduce transition time between classes and increase instructional time.

**C-36. How may an LEA's interventions in priority schools meet the turnaround principle regarding using data to inform instruction and for continuous improvement?**

An LEA may incorporate multiple strategies for using data to inform instruction and for continuous improvement in priority schools, but at a minimum it must provide time for collaboration on the use of data. Examples of data that an LEA may wish to consider examining as part of this effort include student outcome data such as student achievement on State assessments and graduation rates, as well as leading indicator data such as the number of minutes within the school day, student participation rates on State assessments, dropout rates, student attendance rates, number and percentage of students completing advanced coursework, discipline incidents, truants, distribution of teachers by performance level on the LEA's teacher evaluation and support system, and teacher attendance rate. An LEA may also wish to examine the results of formative or interim assessments to help improve classroom instruction.

**C-37. How may an LEA's interventions in priority schools meet the turnaround principle regarding ongoing mechanisms for family and community engagement?**

To ensure that it provides ongoing mechanisms for family and community engagement, an LEA might conduct a community-wide assessment to identify the major factors that significantly affect the academic achievement of students in the school, including an inventory of the resources in the community and the school that could be aligned, integrated, and coordinated to address these challenges. For example, an LEA might choose to establish organized parent groups, hold public meetings involving parents and community members to review school performance and help develop school improvement plans, use surveys to gauge parent and community satisfaction and

support, implement complaint procedures for families, coordinate with local social and health service providers to help meet student and family needs, provide wraparound services for students, or provide parent education classes (including GED, adult literacy, and ESL programs).

**C-38. How may an LEA’s interventions in priority schools meet the turnaround principle regarding establishing a school environment that improves school safety and discipline and addressing other non-academic factors that impact student achievement, such as students’ social, emotional, and health needs?**

To determine which non-academic services or activities will be appropriate and useful under the circumstances, an LEA should examine the needs of students in a priority school. Based on the results of that examination, an LEA might choose to carry out a number of activities to address those needs, such as taking actions to create a safe school environment that meets students’ social, emotional, and health needs; implementing approaches that improve school climate and discipline, such as implementing a system of positive behavioral interventions and supports or taking steps to eliminate bullying and student harassment; or initiating a community stability program to reduce the mobility rate of students in the school.

**C-39. Must an LEA implement one of the four SIG models in a school receiving SIG funds?**

Yes. Nothing in this flexibility affects an LEA’s responsibility with respect to schools receiving SIG funds. An LEA may qualify for SIG funds by applying to implement one of the four SIG models in one or more of its priority schools, in addition to schools on the State’s PLA list. However, an LEA is not required to implement one of the SIG models in a priority school that does not receive SIG funds.

**C-40. By when must an LEA begin implementing interventions aligned with the turnaround principles in each of its priority schools?**

An LEA that is already implementing one of the four SIG models in one or more of its priority schools through the SIG program must continue such implementation in accordance with its SIG plan. An LEA with priority schools that are not currently served through the SIG program must have a plan to begin implementing interventions aligned with the turnaround principles no later than the 2014–2015 school year in all such schools consistent with the timeline the SEA submits in its request for this flexibility. See C-41.

**C-41. How might an SEA develop its timeline to ensure that LEAs with priority schools implement interventions aligned with the turnaround principles?**

In its request, an SEA must provide a timeline for ensuring that LEAs that have one or more priority schools implement meaningful interventions aligned with the turnaround principles in each priority school no later than the 2014–2015 school year. For an SEA that requested flexibility in Window 1 or Window 2, that timeline must ensure that each LEA with one or more priority schools begins implementing interventions in at least a portion of those schools no later than the beginning of the 2012–2013 school year; for an SEA that requests flexibility in Window 3, that timeline must ensure that each LEA with one or more priority schools begins implementing interventions in at

least a portion of those schools no later than the beginning of the 2013–2014 school year. For all SEAs, that timeline must ensure that each LEA with one or more priority schools begins implementing interventions in all of its priority schools no later than the 2014–2015 school year. The Department will not look favorably on an SEA’s timeline that, for example, does not begin to implement interventions in a significant number of its priority schools until the 2014–2015 school year. In developing its timeline, the SEA might consider, after consulting with its LEAs, such factors as the number of priority schools already being served through the SIG program, the distribution of priority schools across LEAs, and the resources and capacity of individual LEAs to implement interventions. (Modified August 3, 2012)

**C-42. What funds are available to support implementation of interventions aligned with the turnaround principles in each priority school?**

An LEA implementing interventions aligned with the turnaround principles in a priority school may use: (1) school improvement funding reserved by the SEA for subgrants to LEAs under ESEA section 1003(a); (2) the amount equal to 20 percent of an LEA’s Title I allocation that the LEA no longer must spend for choice-related transportation and SES; (3) the LEA’s regular Title I, Part A allocation, Title II, Part A allocation, and other Federal funds, consistent with the intent and purpose of those funds; and (4) State and local resources. An LEA that is implementing one of the four SIG models in a priority school may also use funds from the SIG program authorized by ESEA section 1003(g) consistent with the LEA’s approved SIG application.

**C-43. How does implementation of this flexibility interact with an SEA’s or LEA’s implementation of the SIG program?**

An SEA may count PLA schools that are implementing a school intervention model using SIG funds toward the number of priority schools that it identifies under this flexibility. Additionally, during the period of this flexibility, an SEA may award new subgrants from FY 2011 and subsequent years’ SIG funds to an LEA that applies to implement one of the four SIG models in a priority school, in addition to LEAs that apply to implement one of the four SIG models in a PLA school. An LEA must use its SIG funds, including funds for priority schools that are not PLA schools, in accordance with the requirements of the SIG program.

**C-44. Must a priority school that exits priority status by making significant progress in improving student achievement consistent with the SEA’s criteria still implement interventions aligned with the turnaround principles?**

Generally, yes. If a priority school has begun implementing interventions aligned with the turnaround principles and subsequently exits priority status, it must continue implementing those interventions for three years to ensure full and effective implementation. However, if a school exits priority status before beginning implementation of interventions (*e.g.*, if the SEA’s plan calls for implementation to begin in the later years of this flexibility), the school does not have to implement those interventions.

***Implementing State-Determined Interventions in Focus Schools***

**C-45. Are there particular interventions that an LEA must implement in its focus schools?**

No. An LEA must implement interventions in its focus schools, which might include one of the interventions provided as an example in the SEA's request, but this flexibility does not prescribe the particular interventions that an LEA must implement. However, the interventions must be appropriate to a school's needs and the needs of its students. Additionally, an LEA might consider partnering with external providers that have demonstrated expertise in meeting the identified needs of the school and its students.

**C-46. When must an LEA begin implementing interventions in its focus schools?**

In a State that receives ESEA flexibility in Window 1 or Window 2, an LEA must begin implementing one or more interventions in each of its focus schools by the beginning of the 2012–2013 school year. In a State that receives ESEA flexibility in Window 3, an LEA must begin implementing one or more interventions in each of its focus schools by the beginning of the 2013–2014 school year. (Modified August 3, 2012)

**C-47. What funds are available to support the implementation of interventions in an LEA's focus schools?**

Funding is available to support implementation of interventions in an LEA's focus schools from: (1) school improvement funding reserved by an SEA for subgrants to LEAs under ESEA section 1003(a); (2) the amount equal to 20 percent of an LEA's Title I allocation that the LEA no longer must spend for choice-related transportation and SES; (3) the LEA's regular Title I, Part A allocation, Title II, Part A allocation, and other Federal funds, consistent with the intent and purposes of those funds; and (4) State and local resources.

**C-48. How should an LEA take into account the needs of subgroups, in particular the needs of English Learners and students with disabilities, when implementing interventions in a focus school?**

An LEA should ensure that its selection of one or more interventions is based on data and other information on the academic and non-academic needs of student subgroups, including English Learners, students with disabilities, and low-achieving students.

**C-48a. How can an SEA ensure that its LEAs implement interventions in focus schools in a manner that meets the requirements of ESEA flexibility and civil rights laws?**

As is stated in A-11 and A-12, ESEA flexibility does not relieve an SEA or LEA from its obligation to comply with civil rights laws, including laws that prohibit discrimination based on race, color, national origin, sex, disability, and age and laws that require the provision of a free appropriate public education to eligible children with disabilities. Some SEAs have asked about the intersection of these obligations and the obligation under ESEA flexibility for a focus school to implement interventions designed to raise the achievement of the subgroup or subgroups that caused the school to be identified as a focus school, particularly where the lowest-achieving subgroup in the school is a major racial or ethnic group.

Although focus schools are identified based on the performance of a particular subgroup or subgroups and an LEA should consider the needs of the lowest-performing subgroups in targeting interventions and supports, ESEA flexibility does not require interventions to be focused exclusively

on the students that compose the subgroup or subgroups that caused the school to be identified. Rather, interventions in focus schools should be designed to improve the performance of the lowest-performing students in the school — based on an assessment of the specific academic needs of the school and its students — regardless of the particular subgroup or subgroups to which the students belong. By implementing interventions in focus schools based on educational needs as opposed to simply membership in a particular subgroup, an LEA will comply with relevant civil rights laws. (Added August 3, 2012)

### **Building SEA, LEA, and School Capacity to Improve Student Learning**

#### **C-49. How might an SEA ensure appropriate selection of external providers to support the full and effective implementation of required interventions in priority and focus schools?**

An SEA has flexibility to develop and implement a rigorous review process for external providers that meets State and local needs. For example, an SEA might develop a list of pre-approved providers from which its LEAs may select to assist in the implementation of interventions in priority and focus schools. An SEA also might delegate the review and approval of external providers to its LEAs, so long as it reviews and approves the process that LEAs use to select providers. Regardless of the level at which the review takes place, it should take into account, at a minimum, the research base for the services offered by the provider, the track record of the provider in achieving the results promised, the provider's experience in supporting the specific interventions required in each priority and focus school, and the financial integrity of the provider.

#### **C-50. How may an SEA use its school improvement reservation under ESEA section 1003(a) to support an LEA's implementation of appropriate interventions in priority and focus schools?**

As noted in B-15, because ESEA flexibility waives the requirement to identify schools for improvement, corrective action, or restructuring, an SEA that receives this flexibility must allocate funds it reserves under ESEA section 1003(a) to an LEA for use in its priority and focus schools. Allocating section 1003(a) funds in this manner is similar to what many SEAs have already done with their section 1003(a) funds in order to increase the funds available for implementation of the four school intervention models under the SIG program. (Modified August 3, 2012)

### **SUPPORTING EFFECTIVE INSTRUCTION AND LEADERSHIP**

#### **C-51. What does this flexibility require regarding teacher and principal evaluation and support systems?**

To receive this flexibility, an SEA and its LEAs must commit to develop, adopt, and implement (with the involvement of teachers and principals) teacher and principal evaluation and support systems that:

- Will be used for continual improvement of instruction;
- Meaningfully differentiate performance using at least three performance levels;
- Use multiple valid measures in determining performance levels, including as a significant factor data on student growth for all students (including English Learners and students with

disabilities), and other measures of professional practice (which may be gathered through multiple formats and sources, such as observations based on rigorous teacher performance standards, teacher portfolios, and student and parent surveys);

- Evaluate teachers and principals on a regular basis;
- Provide clear, timely, and useful feedback, including feedback that identifies needs and guides professional development; and
- Will be used to inform personnel decisions.

An SEA that requested flexibility in Window 1 or Window 2 had to include in its request guidelines for local teacher and principal evaluation and support systems or a plan to develop and adopt such guidelines by no later than the end of the 2011–2012 school year, and a process for ensuring LEA implementation of these systems. An SEA that requests flexibility in Window 3 must provide in its request guidelines for local teacher and principal evaluation and support systems or a plan to develop and adopt such guidelines by no later than the end of the 2012–2013 school year, and a process for ensuring LEA implementation of these systems. An SEA may include additional guidelines for its LEAs' evaluation and support systems. Any such additional guidelines may not contradict the guidelines set forth above. (Modified August 3, 2012)

**C-52. How may an SEA and its LEAs define performance levels that take into account multiple valid measures for teacher and principal evaluation and support systems?**

In establishing guidelines for teacher and principal evaluation and support systems, an SEA must require an LEA's systems to have a minimum of three performance levels, although the SEA may specify additional levels. The Department recommends, but does not require, including (i) a level reflecting effective performance (to set a clear expectation of effective practice and to inform professional development); (ii) a level above such performance (to recognize, learn from, and retain outstanding educators); and (iii) a level below such performance (to identify those in need of additional support or other interventions). Student growth and other measures that are used to define performance levels must be valid measures, which means measures that are clearly related to increasing student academic achievement and school performance, and are implemented in a consistent and high-quality manner across schools within an LEA. Each performance level should take into account multiple valid measures, including as a significant factor data on student growth for all students (including English Learners and students with disabilities), and other measures of professional practice (which may be gathered through multiple formats and sources, such as observations based on rigorous teacher performance standards, teacher portfolios, and student and parent surveys). An SEA has discretion to determine how student growth is included as a "significant factor" and to determine the other measures an LEA must use in defining its performance levels.

**C-53. What are an SEA's responsibilities with regard to ensuring that an LEA's evaluation and support systems consider student growth?**

An SEA is responsible for ensuring that an LEA develops and implements evaluation and support systems consistent with the guidelines the SEA has developed under principle 3 (as described in the document titled *ESEA Flexibility*). This includes ensuring that LEA evaluation and support systems take into account data on student growth in significant part in determining teacher and principal performance levels.

To ensure that an LEA's evaluation and support systems take into account student growth, several approaches are appropriate. For grades and subjects in which assessments are required under ESEA section 1111(b)(3), an SEA must define a statewide approach for measuring student growth based on such assessments. For grades and subjects in which assessments are not required under ESEA section 1111(b)(3), an SEA may take one of two approaches, or a combination of both: (1) specify measures of student growth that LEAs must use or select from, or (2) provide guidance to LEAs as to what measures of student growth are appropriate, and establish a system to ensure that LEAs will use valid measures of student growth, meaning that the measures are clearly related to increasing student academic achievement and school performance, and are implemented in a consistent and high-quality manner across schools within an LEA. In designing its evaluation and support systems, an LEA should avoid policies that result in the dismissal of a teacher or principal solely on the basis of a single test score.

**C-54. What are examples of other valid measures of professional practice an SEA might use to determine performance levels for teacher and principal evaluation and support systems?**

An SEA has discretion to determine the measures of professional practice other than student growth that are used to determine performance levels for teachers and principals. Other measures of professional practice for teachers might include, for example, multiple observations based on rigorous teacher performance standards, teacher portfolios, and student and parent surveys. In the case of observations, an SEA should ensure that they are implemented in a high-quality manner, such as by providing training to observers in conducting observations against a consistent rubric, monitoring inter-rater reliability, and tracking the distribution of evaluation ratings across schools and LEAs. Other measures of professional practice for principals might include, for example, additional student outcome information such as high school graduation rates and college enrollment rates, as well as evidence of providing supportive teaching and learning conditions, strong instructional leadership, retention rates of effective teachers, and positive family and community engagement.

An SEA's guidelines may allow an LEA some flexibility in the other measures of professional practice that are used as part of local evaluation and support systems aligned with the State's performance levels. If the SEA provides that flexibility, it must have in place a process to ensure that the other measures that an LEA includes are valid measures, meaning that they are clearly related to increasing student academic achievement and school performance, and are implemented in a consistent and high-quality manner across schools within an LEA.

**C-55. May an SEA require an LEA to include specific measures of professional practice in addition to student growth in its evaluation and support systems?**

Yes, if the SEA chooses to do so. Although an SEA may give an LEA discretion to choose the additional measures of professional practice that will be included in its evaluation and support systems, an SEA has the option of specifying the particular measures of professional practice that an LEA must include in its evaluation and support systems, as well as the weights given to each of those measures. An SEA also has the option of providing some guidelines with respect to the measures included in the evaluation and support systems, while allowing an LEA to decide how it will implement those guidelines. An SEA must have a plan for insuring that all measures used in an

LEA's teacher and principal evaluation and support systems are valid measures, meaning that they are clearly related to increasing student academic achievement and school performance, and are implemented in a consistent and high-quality manner across schools within an LEA.

**C-56. What frequency of evaluation constitutes “regularly” evaluating educators?**

An SEA and its LEAs should ensure that formative evaluations occur with a frequency sufficient to ensure that teachers and principals receive timely and relevant feedback to support effective practice, and that principals and LEA staff have performance data that are sufficiently recent to fairly and accurately use evaluation and support system results to improve instruction, guide professional development, and to inform other personnel decisions. As new teachers and principals may experience greater changes in effectiveness from year to year, and as more frequent ratings for such teachers and principals may be useful in informing decisions around tenure and licensure, the SEA and its LEAs might consider establishing different levels of frequency based on teachers' and principals' years of experience. The Department recommends, but does not require, that teachers and principals in their first three years of service be summatively evaluated annually, and at least once every three years thereafter.

By “evaluation,” the Department refers to the actual assessment of the teacher's or principal's effectiveness, not necessarily to the number of times a teacher or principal is observed. One evaluation could be based on a single observation, but it could also be based on multiple observations. Although no specific number of observations is required, good practice suggests that multiple observations per year should occur for all teachers and principals. Inexperienced teachers and principals, or teachers and principals who have been evaluated as ineffective, might benefit from more observations per year as a means of providing appropriate guidance to help them identify areas of weakness and improve their practice.

**C-57. How might an SEA and its LEAs use evaluation and support systems to improve teacher and principal effectiveness?**

In a State that receives ESEA flexibility in Window 1 or Window 2, an LEA is required to have in place, by the end of the 2014–2015 school year, a plan to use evaluation and support systems results for continual improvement of instruction, guiding professional development, and informing personnel decisions beginning in the 2015–2016 school year. In a State that receives ESEA flexibility in Window 3, an LEA is required to have in place a plan to fully implement its new evaluation and support systems in the 2015–2016 school year and to use evaluation and support systems results for continual improvement of instruction, guiding professional development, and informing personnel decisions beginning in the 2016–2017 school year. The SEA and its LEAs have discretion in determining exactly how evaluation and support systems results are used for these purposes, but the Department recommends that the SEA and LEAs develop comprehensive approaches that are designed to improve the effectiveness of all teachers and principals and ensure that all students, including low-income and minority students, English Learners, and students with disabilities, have access to highly rated teachers and leaders.

In designing their evaluation and support systems, an SEA and its LEAs should work with teachers, principals, and other stakeholders to develop, through their performance levels, a shared understanding of the practices, competencies, and levels of student growth that constitute effective

teaching or leadership. Based on these shared understandings, the Department encourages the SEA and its LEAs to develop comprehensive systems of evaluation and professional development that support all teachers and principals by identifying both their strengths and their areas for professional growth, and creating opportunities for them to improve their skills in areas of identified need. Such opportunities might include professional development programs that are evidence-based and aligned with identified needs, expanded learning time to provide educators with time to collaborate and plan together, mentoring opportunities that pair teachers based on identified needs and strengths, and collaborative teams of teachers engaged in joint planning or professional development opportunities.

Additionally, the SEA and its LEAs should develop strategies for retaining teachers and principals rated at high levels. This might include providing those teachers with additional compensation, such as through bonus payments or by redesigning compensation structures to allow highly rated teachers to progress more rapidly to higher salary levels; creating professional advancement opportunities, including hybrid roles that allow teachers to serve as leaders within the school while maintaining classroom responsibilities; using highly rated teachers as mentors for new teachers; and developing other recognition programs that offer non-monetary rewards. (Modified August 3, 2012)

**C-58. Must an SEA have developed and adopted the guidelines for teacher and principal evaluation and support systems by the time it requests this flexibility?**

No. If an SEA that requested flexibility in Window 1 or Window 2 had not developed and adopted the guidelines for teacher and principal evaluation and support systems at the time it submitted its request, to receive this flexibility, the SEA was required to provide a plan and timeline for developing and adopting the guidelines no later than the end of the 2011–2012 school year and provide an assurance that it would submit to the Department for review and approval a copy of those guidelines. Likewise, if an SEA that requests flexibility in Window 3 has not yet developed and adopted the guidelines for teacher and principal evaluation and support systems, to receive this flexibility, the SEA must provide in its request a plan and timeline for developing and adopting the guidelines no later than the end of the 2012–2013 school year and provide an assurance that it will submit to the Department for review and approval a copy of those guidelines. (Modified August 3, 2012)

**C-59. What is the deadline for an LEA to implement teacher and principal evaluation and support systems that meet the principles of this flexibility?**

In a State that receives ESEA flexibility in Window 1 or Window 2, an LEA must begin developing its evaluation and support systems no later than the 2012–2013 school year, and either: (1) pilot the systems no later than the start of the 2013–2014 school year and implement the systems no later than the start of the 2014–2015 school year; or (2) implement the systems no later than the start of the 2013–2014 school year. Additionally, an LEA must, no later than the end of the 2014–2015 school year, have a plan in place to use evaluation and support systems results to improve instruction, guide professional development, and inform other personnel decisions beginning in the 2015–2016 school year.

In a State that receives ESEA flexibility in Window 3, an LEA must begin developing its evaluation and support systems no later than the 2013–2014 school year, and either: (1) pilot the systems no later than the start of the 2014–2015 school year with the intent to implement the systems no later than the start of the 2015–2016 school year; or (2) implement the systems no later than the start of the 2014–2015 school year. Additionally, an LEA must, no later than the end of the 2014–2015 school year, have a plan in place to use evaluation and support systems results to improve instruction, guide professional development, and inform other personnel decisions beginning in the 2016–2017 school year. (Modified August 3, 2012)

**C-60. To what timelines for developing and implementing teacher and principal evaluation and support systems will an LEA that is also participating in other Department programs (i.e., Race to the Top, Teacher Incentive Fund, SIG) in addition to this flexibility be held accountable?**

An LEA that is also participating in the Race to the Top, Teacher Incentive Fund, or SIG programs must follow the earliest required timeline, regardless of whether it comes from this flexibility or a separate Department program.

**C-61. What resources are available to SEAs and LEAs to help them develop, adopt, and implement teacher and principal evaluation and support systems that meet principle 3 of this flexibility?**

Numerous resources regarding teacher and principal evaluation and support systems are available to SEAs and LEAs. In particular, SEAs and their LEAs may wish to consult the following:

- **A Practical Guide to Designing Comprehensive Teacher Evaluation Systems** (National Comprehensive Center for Teacher Quality, available at: <http://www.tqsource.org/publications/practicalGuideEvalSystems.pdf>);
- **Measuring Student Growth for Teachers in Non-Tested Grades and Subjects: A Primer** (Reform Support Network, available at: [http://www.swcompcenter.org/educator\\_effectiveness2/NTS\\_PRIMER\\_FINAL.pdf](http://www.swcompcenter.org/educator_effectiveness2/NTS_PRIMER_FINAL.pdf));
- **Great Teachers and Leaders: State Considerations on Building Systems of Educator Effectiveness** (Reform Support Network, available at: <http://www2.ed.gov/programs/racetothetop/great-teachers.doc>);
- **Alternative Measures of Teacher Performance** (National Comprehensive Center for Teacher Quality, available at: [http://www.tqsource.org/pdfs/TQ\\_Policy-to-PracticeBriefAlternativeMeasures.pdf](http://www.tqsource.org/pdfs/TQ_Policy-to-PracticeBriefAlternativeMeasures.pdf));
- **Guide to Teacher Evaluation Products** (National Comprehensive Center for Teacher Quality, available at: <http://www3.learningpt.org/tqsource/GEP/>);

- **Measuring Teachers Contributions to Student Learning Growth for Non-tested Grades and Subjects** (National Comprehensive Center for Teacher Quality, available at: <http://www.tqsource.org/publications/MeasuringTeachersContributions.pdf>);
- **State Policies and Examples of Best Practices in Principal Evaluation** (National Comprehensive Center for Teacher Quality, available at: [http://www.tqsource.org/webcasts/201106Workshop/Presentations/ConcurrentSession1\\_StatePoliciesInPrincipalEval.pdf](http://www.tqsource.org/webcasts/201106Workshop/Presentations/ConcurrentSession1_StatePoliciesInPrincipalEval.pdf));
- **Getting It Right: A Comprehensive Guide to Developing and Sustaining Teacher Evaluation and Support Systems** (National Board for Professional Teaching Standards, available at: [http://www.nbpts.org/userfiles/file/NBPTS\\_Getting-It-Right.pdf](http://www.nbpts.org/userfiles/file/NBPTS_Getting-It-Right.pdf)); and
- **Labor-Management Collaboration Conference Toolkit** (U.S. Department of Education, available at: <http://www.ed.gov/sites/default/files/lmc-conference-toolkit.pdf>).

Although some of these resources are designed specifically for Race to the Top grantees, the Department believes the information they contain may be useful to SEAs and LEAs that implement this flexibility.<sup>1</sup>

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<sup>1</sup> This information is provided for the reader's convenience. The Department does not control or guarantee the accuracy, relevance, timeliness, or completeness of outside information. Further, the inclusion of information or addresses, or Web sites for particular items does not reflect their importance, nor is it intended to endorse any views expressed, or products or services offered.

## **BURDEN REDUCTION**

### **C-62. To receive this flexibility, what must an SEA do with respect to burden reduction?**

An SEA must provide an assurance that it will evaluate and, based on that evaluation, revise its own administrative requirements to reduce duplication and unnecessary burden on LEAs and schools. The SEA must take this action over the course of the timeframe of this flexibility. This requirement is consistent with ESEA section 1111(c)(7), which requires SEAs to provide “the least restrictive and burdensome regulations” for LEAs and schools.

### **C-63. What might an SEA do to reduce burden?**

To reduce burden, an SEA might identify record keeping and reporting requirements that are duplicative or not tied to critical priorities. An SEA might also look for ways to streamline data collection timelines, consolidate or share similar information between programs and agencies, or identify barriers to flexibly using funds and budgeting in an effective manner. In response to the burdens and barriers identified, an SEA might take regulatory or legislative action to reduce these barriers. The SEA should evaluate all decisions to change State-level administrative requirements by considering their impact on student outcomes and in particular the outcomes of its neediest students, including English Learners, students with disabilities, and low-achieving students.

## **D. GUIDANCE FOR SEAS REQUESTING ESEA FLEXIBILITY**

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This section provides general guidance for SEAs with respect to requesting this flexibility.

### **D-1. Is each SEA eligible to request this flexibility?**

Yes, each SEA is eligible to request this flexibility.

### **D-2. Must an SEA solicit input on its request from appropriate stakeholders?**

Yes. In its request for this flexibility, an SEA must provide a description of how the SEA meaningfully engaged and solicited input on its request from teachers and their representatives, as well as diverse communities and appropriate stakeholders, such as students, parents, community-based organizations, civil rights organizations, organizations representing students with disabilities and English Learners, business organizations, and Indian tribes. By engaging relevant stakeholders at the outset of the planning and implementation process, an SEA can ensure they have input in shaping the SEA's comprehensive plan, which will help ensure successful implementation of the SEA's plan. Ideally, an SEA will solicit input from stakeholders representing diverse perspectives, experiences, and interests, including those who will be impacted by and those who will be implementing the policies included in the SEA's plan, and will strengthen its request by revising it based on this input.

### **D-3. Must an SEA consult with its Committee of Practitioners?**

Yes. Under ESEA section 1903(b), an SEA must have in place a State Committee of Practitioners to advise the State in carrying out its responsibilities under Title I, Part A of the ESEA. Because most of this flexibility relates to requirements of Title I, Part A, each SEA seeking this flexibility must provide an assurance that it has consulted with the State's Committee of Practitioners regarding the information set forth in its request. The Committee of Practitioners must include representatives from LEAs, administrators, teachers, parents, members of local school boards, representatives of private school children, and pupil services personnel.

### **D-4. What if an SEA must secure a change in State law or policy in order to implement one of the principles of this flexibility?**

There may be instances in which an SEA needs to secure a change in State law or policy in order to implement one of the principles of this flexibility. For example, an SEA may need a change in State law with respect to components of its accountability system in order to implement a differentiated recognition, accountability, and support system consistent with principle 2. The SEA does not necessarily need to have secured this change by the time it submits its request for this flexibility; if its request is otherwise acceptable and meets the principles of this flexibility, the Department may conditionally approve the SEA's request. The SEA must, however, secure any necessary change in State law or policy in time for it and its LEAs to fully meet their responsibilities consistent with the timelines for implementation contained in the document titled *ESEA Flexibility*, and may not implement any waivers until it has done so.

**D-5. In reviewing and approving an SEA’s request for this flexibility, are there other factors the Department may take into account?**

The Department will evaluate an SEA’s request for this flexibility primarily on the basis of the quality and completeness of the information contained in the request. However, in deciding whether to approve an SEA’s request for this flexibility, the Department might take into account instances of substantial or recurring non-compliance with statutory and regulatory requirements applicable to Department programs under which the SEA receives funds. Based on its consideration of these issues, the Department might attach additional conditions to the SEA’s receipt of this flexibility or deny approval of the SEA’s request for this flexibility until the SEA demonstrates full compliance with other Department programmatic or legal requirements.

## **E. GUIDANCE FOR LEAS**

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This section provides general guidance for LEAs with respect to this flexibility.

### **E-1. May an LEA independently request this flexibility if its SEA does not request this flexibility?**

No. Because this flexibility includes a comprehensive set of waivers of State- and LEA-level ESEA requirements and accompanying principles that must be implemented in their entirety, an LEA may not request this flexibility independently of its SEA.

### **E-2. What flexibility and other benefits would an LEA gain through this flexibility?**

LEAs would gain flexibility and benefits in the following areas, including the associated regulatory, administrative, and reporting requirements:

#### School Improvement

- An LEA would benefit from AYP determinations based on new ambitious but achievable AMOs that are set by the SEA.
- An LEA with a reward school would receive the benefits of the State's recognition and reward program.
- If the SEA has requested a waiver of making AYP determinations, an LEA would no longer have to identify schools as not making AYP.
- An LEA would no longer be required to identify schools for improvement, corrective action, or restructuring.
- An LEA would no longer be required to implement the school improvement requirements associated with identifying schools for improvement, corrective action, or restructuring under ESEA section 1116(b), including developing and implementing a school improvement plan; offering SES and public school choice to eligible students; and implementing corrective action and restructuring plans.
- A school in improvement status would no longer have to reserve 10 percent of its Title I, Part A allocation for professional development or carry out other school improvement requirements of ESEA section 1116(b).
- An LEA would no longer be required to spend an amount equal to 20 percent of its Title I, Part A allocation on providing SES and public school choice-related transportation to eligible students.
- An LEA would be permitted to operate a schoolwide program in any of its priority schools that are implementing interventions aligned with the turnaround principles or in its focus schools that are implementing interventions that are based on the needs of the students in the school and designed to enhance the entire educational program of the school.

#### LEA Improvement

- If the SEA has requested a waiver of making AYP determinations, the SEA would no longer have to identify LEAs as not making AYP.

- An LEA would no longer be identified for improvement or corrective action, required to develop an improvement plan, obligated to reserve 10 percent of its Title I, Part A allocation for professional development, or subject to other LEA improvement requirements of ESEA section 1116(c).
- An LEA that receives Small, Rural School Achievement Program or Rural and Low-Income School Program funds would have flexibility to use those funds for any purpose authorized under the applicable program regardless of the LEA's AYP status.

#### Highly Qualified Teacher Improvement Plan

- An LEA that has missed HQT targets for two years would no longer be required to develop an improvement plan under ESEA section 2141(a) or enter into an agreement with its SEA under ESEA section 2141(c).

#### Transferability

- An LEA would be permitted to transfer up to 100 percent of funds that may be transferred to other ESEA programs under ESEA section 6123(b) (Title II, Part A; Title II, Part D; Title IV, Part A; funds for State-level activities under Title IV, Part B; and Title V, Part A) and into Title I, Part A.

#### School Improvement Grants

- An LEA would be eligible to receive SIG funds to implement a school intervention model in its priority schools, even if those schools are not in improvement and therefore would not otherwise qualify the LEA to receive SIG funds.

#### Serving Schools in Rank Order of Poverty

- If an SEA has requested a waiver of ESEA section 1113(a)(3)-(4) and (c)(1), an LEA may serve a Title I-eligible high school with a graduation rate below 60 percent that the SEA has identified as a priority school even if that school does not rank sufficiently high to be served based solely on its poverty percentage.

#### 21st Century Community Learning Center Funds

- If an SEA has requested a waiver of ESEA sections 4201(b)(1)(A) and 4204(b)(2)(A), an LEA may use 21st CCLC funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session.

Note that an LEA may continue any one or more of these activities, consistent with the SEA's request for this flexibility. (Modified August 3, 2012)

### **E-3. What responsibilities would an LEA have under this flexibility?**

An LEA in a State whose SEA receives this flexibility must implement all of the principles of this flexibility. An LEA's responsibilities under this flexibility fall into the following key areas:

### College- and Career-Ready Expectations for All Students

- An LEA would be required to implement all changes the SEA makes to its standards and assessments under principle 1 of this flexibility, including carrying out any transition activities that are part of the SEA’s transition plan.

### State-Developed Differentiated Recognition, Accountability, and Support

- An LEA would be required to implement interventions in each focus school located within the LEA.
- An LEA would be required to implement interventions aligned with the turnaround principles in each priority school located within the LEA.
- For Title I schools that are not identified as priority or focus schools, an LEA would be required to implement any interventions required by the SEA’s differentiated recognition, accountability, and support system.

### Supporting Effective Instruction and Leadership

- An LEA would be required to develop, adopt, pilot, and implement teacher and principal evaluation and support systems that meet the SEA’s guidelines.

#### **E-4. Must an LEA comply with State and local laws, regulations, and policies, including collective bargaining agreements?**

Yes. As is stated in the document titled *ESEA Flexibility*, “Nothing in these principles shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.” In other words, nothing in this flexibility gives an LEA the authority to take action it is not otherwise permitted to take.

Accordingly, an LEA must implement this flexibility in compliance with all governing laws, regulations, and policies, which include providing the rights, remedies, and procedures afforded to LEA employees under existing collective bargaining agreements. At the same time, however, if an LEA fails to meet the principles of this flexibility due to a conflict with one or more of those rights, remedies, or procedures, it may not take advantage of the flexibilities being offered. Rather, in the case of such a conflict, an LEA must secure necessary changes to local laws, regulations, or policies in a manner that enables compliance with the relevant principles and guidelines. In the case of a conflict with its collective bargaining agreement, an LEA and the collective bargaining unit would need to negotiate collaboratively to modify the agreement.

An LEA need not secure necessary changes by the time its SEA requests this flexibility. Rather, the LEA must secure those changes in time to be able to meet the principles consistent with the timelines for each principle.

**APPENDIX A****Implementation of Waivers by SEAs and LEAs**

<b>REQUIREMENT TO BE WAIVED</b>	<b>SEA IMPLEMENTATION</b>	<b>LEA IMPLEMENTATION</b>
State reservation of Title I, Part A funds for school improvement activities	SEA considers whether to distribute section 1003(a) reservation for use in priority and focus schools even if they are not in improvement, corrective action, or restructuring	None
State reservation of Title I, Part A funds for reward schools	SEA considers whether to distribute section 1117(c) reservation for use in reward schools	None
Timeline for 100 percent proficiency	SEA sets ambitious but achievable AMOs	Accountability determinations based on new AMOs
Making AYP determinations (*Optional)	SEA need not make AYP determinations for LEAs	LEA need not make AYP determinations for schools
Identification of schools for improvement, corrective action, or restructuring	None	LEA need not identify schools for improvement, corrective action, or restructuring
Identification of LEAs for improvement or corrective action	SEA need not identify LEAs for improvement or corrective action	LEA no longer subject to improvement or corrective actions
Requirements for SEA and LEAs to include on their respective report cards information regarding LEAs and schools in improvement status	SEA need not include on its report card information on LEAs that are in improvement status	LEA need not include on its report card information on schools within the LEA that are in improvement status
Requirements for schools and LEAs in improvement status to take certain specified actions ( <i>e.g.</i> , offer public school choice and SES)	SEA need not carry out its responsibilities for LEAs and schools within those LEAs ( <i>e.g.</i> , approve and monitor SES providers)	LEA no longer subject to the school improvement requirements of section 1116(b), including public school choice and SES, or the LEA improvement requirements of section 1116(c)

REQUIREMENT TO BE WAIVED	SEA IMPLEMENTATION	LEA IMPLEMENTATION
Poverty threshold for operation of a schoolwide program	None	LEA may operate a schoolwide program in a priority or focus school even if the school does not meet the poverty threshold in order to allow the LEA to implement interventions aligned with the turnaround principles or an intervention that is based on the needs of the students in the school and designed to enhance the entire educational program of the school, as appropriate
Requirement to serve schools with Title I funds in rank order of poverty (*Optional)	None	LEA may serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA has identified as a priority school even if it does not rank high enough to be served based solely on the school's poverty rate
Requirement that LEAs not making progress toward meeting HQT requirements develop an improvement plan and SEA provides technical assistance	SEA would no longer need to provide technical assistance to LEAs developing improvement plans to meet HQT requirements	LEA that is not making progress toward meeting HQT requirements would no longer have to develop an improvement plan
Requirement for SEA to enter into or enforce agreements with LEAs regarding HQT requirements	SEA would not enter into or enforce existing agreements with LEAs	LEA would not have to enter into agreement with the SEA, even if it has not met the applicable HQT requirements and has not met AYP for 3 consecutive years  LEA that has already entered into agreement with SEA no longer needs to implement terms of agreement
Limits on transferability of funds	SEA would be permitted to exceed relevant transferability limits; SEA would not be required to report to Department prior to transferring funds	LEA would be permitted to exceed relevant transferability limits; LEA would not be required to report to the SEA prior to transferring funds

<b>REQUIREMENT TO BE WAIVED</b>	<b>SEA IMPLEMENTATION</b>	<b>LEA IMPLEMENTATION</b>
Requirement regarding use of 21st CCLC program funds	SEA may award funds to eligible entities to provide activities that support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session	LEA may apply for funds to provide <b>activities that support</b> expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session

**APPENDIX B****Implementation of Principles by SEAs and LEAs**

<b>PRINCIPLE</b>	<b>SEA IMPLEMENTATION</b>	<b>LEA IMPLEMENTATION</b>
Adopt college- and career-ready standards	SEA formally adopts college- and career-ready standards	None (LEA implements standards)
Adopt ELP standards that correspond to and that reflect the academic language skills necessary to access and meet the new college- and career-ready standards	SEA adopts ELP standards that correspond to and that reflect the academic language skills necessary to access and meet the new college- and career-ready standards	None (LEA implements standards)
Implement college- and career-ready standards	SEA carries out transition activities such as conducting “gap analysis” between old and new standards, publicizing results of analysis, publicizing new standards, and developing instructional resources based on new standards, etc.	LEA carries out specific transition activities outlined in the SEA’s transition plan, such as developing or adopting instructional materials aligned with standards, conducting professional development on new standards, and taking other necessary steps to implement the standards
Develop and administer high-quality assessments, including alternate assessments for students with disabilities, aligned with college- and career-ready standards	SEA develops statewide high-quality assessments, including alternate assessments for students with disabilities, aligned with college- and career-ready standards	LEA administers statewide high-quality assessments, including alternate assessments for students with disabilities, aligned with college- and career-ready standards
Develop and administer high-quality ELP assessments aligned with ELP standards	SEA develops and administers high-quality ELP assessments aligned with ELP standards	LEA administers high-quality ELP assessments aligned with ELP standards
Annually report college-going and college credit-accumulation rates for each public high school in the State	SEA implements plan to annually report publicly the college-going and college credit-accumulation rates for each public high school in the State.	None

PRINCIPLE	SEA IMPLEMENTATION	LEA IMPLEMENTATION
Implement a State-developed differentiated recognition, accountability, and support system	SEA develops and implements a State-developed differentiated recognition, accountability, and support system for all LEAs and all Title I schools that provides differentiated recognition, accountability, and support based on the schools' performance and how such performance has changed over time	LEA implements any interventions required by the SEA's differentiated recognition, accountability, and support system
Identify and recognize or reward highest-performing and high-progress Title I schools (collectively "reward schools")	SEA identifies and recognizes or rewards reward schools (highest-performing and high-progress schools)	None
Differentiate support and interventions in focus schools	SEA identifies the State's focus schools and examples of interventions that an LEA may implement in its focus schools	LEA implements interventions in each focus school
Implement interventions aligned with the turnaround principles in priority schools	SEA identifies the State's priority schools	LEA implements interventions aligned with the turnaround principles in each priority school
Develop, adopt, pilot, and implement teacher and principal evaluation and support systems	SEA develops and adopts guidelines for teacher and principal evaluation and support systems, provides student growth data to teachers, and develops a plan to ensure equitable distribution of effective teachers and principals	LEA develops, adopts, pilots, and implements teacher and principal evaluation and support systems that meet or exceed SEA guidelines
Review and evaluate State-level administrative requirements to reduce duplication and unnecessary burden	SEA reviews and evaluates State-level administrative requirements and adjusts appropriately in order to reduce duplication and unnecessary burden on LEAs and schools by removing duplicative requirements and those not linked to critical priorities that improve student outcomes	None

## APPENDIX C

### Provisions Waived by ESEA Flexibility<sup>2</sup>

ESEA SECTION <sup>2</sup>	DESCRIPTION	NOTES
<b>STATE-LEVEL RESERVATION FOR SCHOOL IMPROVEMENT</b> 1003(a)	Requires SEA to reserve 4% of its Title I, Part A allocation for school improvement activities and to distribute at least 95% to LEAs for use in Title I schools in improvement, corrective action, and restructuring	The reservation would not be waived; an SEA may distribute section 1003(a) funds to LEAs for use in priority and focus schools
<b>SCHOOL IMPROVEMENT GRANTS</b> 1003(g)	Requires SEA to award School Improvement Grant (SIG) funds to LEAs with Title I schools in improvement, corrective action, or restructuring	Waiver permits SEA to award SIG funds to an LEA to implement one of the four SIG models in any priority school
<b>2013-2014 TIMELINE</b> 1111(b)(2)(E) - (H)	Establishes requirements for setting annual measurable objectives (AMOs)	Waiver permits SEA to select one of three options for setting AMOs
<b>AYP DETERMINATIONS</b> 1116(a)(1)(A)-(B) and 1116(c)(1)(A) (*Optional)	Requires SEA and LEAs to make AYP determinations for LEAs and schools, respectively	Waiver permits SEA and LEAs to no longer make AYP determinations for LEAs and schools, respectively; instead, an SEA and its LEAs must report on their report cards performance against the AMOs for all subgroups identified in ESEA section 1111(b)(2)(C)(v), and use performance against the AMOs to support continuous improvement in Title I schools
<b>SCHOOL WIDE POVERTY THRESHOLD</b> 1114(a)(1)	Requires 40% poverty threshold to be eligible to operate a schoolwide program	Waiver permits LEA with less than 40% poverty to operate a schoolwide program in a priority school or a focus school that is implementing a schoolwide intervention

<sup>2</sup> The corresponding regulations that implement these statutory provisions are also waived.

<b>WITHIN-DISTRICT ALLOCATIONS</b> 1113(a)(3)-(4) and (c)(1) (*Optional)	Requires LEA to serve schools with Title I funds in rank order of poverty	Waiver permits an LEA to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA has identified as a priority school even if that school does not rank sufficiently high to be served based solely on the school's poverty rate
<b>SCHOOL IMPROVEMENT REQUIREMENTS</b> 1116(b) (except (b)(13))	Requires LEA to identify schools for improvement, corrective action, and restructuring with corresponding requirements	1116(b)(13), which requires LEA to permit a child who has transferred to remain in the choice school through the highest grade in the school, is not waived
<b>LEA IMPROVEMENT REQUIREMENTS</b> 1116(c)(3) and (5) – (11)	Requires an SEA to identify LEAs for improvement and corrective action with corresponding requirements	
<b>LEA IMPROVEMENT REQUIREMENTS</b> 1116(e)	Requires SEA and LEAs to take a variety of actions to offer supplemental educational services to eligible students in schools in improvement, corrective action, restructuring	
<b>RESERVATION FOR STATE ACADEMIC ACHIEVEMENT AWARDS PROGRAM</b> 1117(b)(1)(B)	Limits the schools that can receive Title I, Part A funds reserved for State awards program	Waiver allows funds reserved for State awards program to go to any reward school
<b>HIGHLY QUALIFIED TEACHER PLAN ACCOUNTABILITY REQUIREMENT</b> 2141(c)	Requires SEA/LEA agreement on use of Title II, Part A funds for LEAs that miss AYP for 3 years and fail to make progress toward reaching annual objectives for highly qualified teachers	Waiver includes existing agreements and applies to restrictions on hiring paraprofessionals under Title I, Part A

<b>LIMITATIONS ON TRANSFERABILITY OF FUNDS</b> 6123(a)	Limits to 50% the amount an SEA may transfer from a covered program into another covered program or into Title I, Part A	Waiver applies to the percentage limitation, thereby permitting an SEA to transfer up to 100% from a covered program
<b>LIMITATIONS ON TRANSFERABILITY OF FUNDS</b> 6123(b)(1)	Limits to 50% or 30% the amount an LEA may transfer from a covered program into another covered program or into Title I, Part A	Waiver applies to the percentage limitations as well as to the restrictions on the use of transferred funds
<b>LIMITATIONS ON TRANSFERABILITY OF FUNDS</b> 6123(d)	Requires modification of plans and notice of transfer	
<b>LIMITATIONS ON TRANSFERABILITY OF FUNDS</b> 6123(e)(1)	Transferred funds are subject to the requirements of the program to which they are transferred	Waiver permits an LEA to exclude funds transferred into Title I, Part A from the base in calculating any set-aside percentages
<b>RURAL SCHOOLS</b> 6213(b)	Requires LEAs that fail to make AYP to use funds to carry out the requirements under ESEA section 1116	
<b>RURAL SCHOOLS</b> 6224(e)	Requires SEA to permit LEAs that fail to make AYP to continue to receive an SRSA grant only if LEA uses funds to carry out ESEA section 1116	
<b>LIMITATIONS ON USE OF 21ST CCLC PROGRAM FUNDS</b> sections 4201(b)(1)(A) and 4204(b)(2)(A) (*Optional)	Requires eligible entities to use 21st CCLC program funds for activities during non-school hours or periods when school is not in session ( <i>i.e.</i> , before and after school or during summer recess)	Waiver permits an SEA to permit community learning centers that receive funds under the 21st CCLC program to use those funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session