



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

ASSISTANT SECRETARY

APR 23 2013

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OFFICE OF THE ASSISTANT SECRETARY
OF THE DEPARTMENT OF EDUCATION

Dear Chief State School Officer:

I am writing to provide you with information to share with auditors regarding your State's receipt of ESEA flexibility and how it might affect single audits of your State educational agency (SEA) and local educational agencies (LEAs) under the Office of Management and Budget (OMB) Circular A-133 with respect to the July 1, 2011 through June 30, 2012 audit period (specifically, the 2011–2012 school year).

The U.S. Department of Education (The Department) has approved your State's request to waive certain requirements of the Elementary and Secondary Education Act of 1965, as amended (ESEA), in exchange for developing and implementing a rigorous and comprehensive plan designed to improve educational outcomes for all students, close achievement gaps, increase equity, and to improve the quality of instruction (ESEA flexibility). The majority of the waivers granted through ESEA flexibility affect requirements that an SEA or LEA would otherwise implement during the 2012–2013 and 2013–2014 school years. However, a few could affect requirements that applied to the 2011–2012 school year.

Auditors who review an SEA's or LEA's expenditures of Federal education funds rely on the A-133 Compliance Supplement, which lists specific requirements of various Federal education programs to guide auditors' reviews. The Department annually works with OMB to update the A-133 Compliance Supplement to reflect any changes to requirements that effect the year being audited. For example, the process for revising the 2013 Compliance Supplement, which will cover the July 1, 2012 through June 30, 2013 audit period, is well underway and will address changes to ESEA program requirements brought about by ESEA flexibility that apply to the 2012–2013 school year. In the case of the 2012 Compliance Supplement that auditors are currently using to audit the 2011–2012 school year, a few ESEA requirements listed in the supplement no longer apply in approved ESEA flexibility States. In addition, other requirements may not apply, depending on specifics of an SEA's ESEA flexibility request and when your State's ESEA flexibility request was approved. The 2012 Compliance Supplement is available at: http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2012.

In order to avoid any confusion and avert potential audit exceptions with respect to waived requirements, I want to draw attention to changes to requirements in approved ESEA flexibility States that may be applicable to the audit period covered by the 2012 Compliance Supplement. The enclosure to this letter summarizes those changes that might affect the July 1, 2011 through June 30, 2012 audit period.

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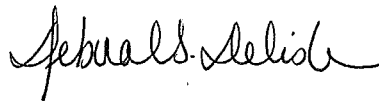
The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Please note that the other requirements in the 2012 Compliance Supplement that are not addressed in the enclosure still apply.

Please share this information with your State auditors as well as with your LEAs and ask them to share it with their local auditors. If you have any questions about how ESEA flexibility impacts the single audit process, please send them to ESEAFlexibility@ed.gov and my staff will reply to your inquiry at their earliest convenience.

Thank you for your continued efforts to enhance education for all of your students.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah S. Delisle".

Deborah S. Delisle
Assistant Secretary

Enclosure

Enclosure

Page number(s) in 2012 Compliance Supplement	Summary of ESEA requirement in the absence of ESEA flexibility	Summary of changes to requirement under ESEA flexibility
4-84.000-10	<p>➤ LEA that receives Small, Rural School Achievement Program funds or Rural and Low-Income School Program funds and misses adequate yearly progress (AYP) after the third year of participation must use the funds to carry out activities under Section 1116 of ESEA.</p>	<p>➤ LEA that receives Small, Rural School Achievement Program funds or Rural and Low-Income School Program funds may use those funds for any authorized purpose regardless of its AYP status.</p>
4-84.000-20—4-84.000-22	<p>➤ There is a presumption that supplanting has occurred if an SEA or LEA uses Federal funds to provide services that the SEA or LEA was required to make available under other Federal, State or local laws.</p>	<p>➤ SEA or LEA that is using Federal funds subject to a supplement not supplant requirement to implement elements of the SEA's flexibility request that are required by State law or regulation would not violate the "required by law" presumption of supplanting.</p>
4-84.000-23	<p>➤ SEA may transfer up to 50 percent of the non-administrative funds allocated for State-level activities from one or more of the authorized programs among those programs or into Title I, Part A.</p> <p>➤ LEA not identified for improvement or corrective action under Section 1116(c) of ESEA may transfer up to 50 percent of the funds allocated to it from one or more of the authorized programs among those programs or into Title I, Part A.</p> <p>➤ LEA identified for improvement under Section 1116(c) may transfer up to 30 percent of the funds allocated to it from one</p>	<p>➤ SEA may transfer up to 100 percent of the non-administrative funds allocated for State-level activities from one or more of the authorized programs among those programs or into Title I, Part A.</p> <p>➤ LEA may transfer up to 100 percent of the funds allocated to it from one or more of the authorized programs among those programs or into Title I, Part A, without regard to the improvement status of the LEA and without restriction on use of the funds.¹</p>

¹ There is a limitation on the 100 percent transferability for Title II, Part A. 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 ED 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.

Page number(s) in 2012 Compliance Supplement	Summary of ESEA requirement in the absence of ESEA flexibility	Summary of changes to requirement under ESEA flexibility
4-84.010-8—4-84.010-9	<p>or more of the authorized programs for (i) school improvement under Section 1003; or (ii) other LEA improvement activities consistent with Section 1116(c).</p> <p>➤ LEA identified for corrective action may not transfer funds.</p>	<p>➤ SEA may allocate Section 1003(a) of ESEA funds to any LEA to serve focus and priority schools identified by the SEA under ESEA flexibility if the SEA determines such schools are most in need of additional support.</p>
4-84.010-14	<p>➤ Of the amount reserved for school improvement under Section 1003(a) of ESEA, SEA must allocate not less than 95 percent directly to LEAs for activities under section 1116 in schools identified for school improvement, corrective action, and restructuring.</p> <p>➤ LEA must identify schools for improvement, corrective action, or restructuring, consistent with section 1116 of ESEA, for the 2012–2013 school year based on assessments administered in the 2011–2012 school year.</p> <p>➤ LEA must report on its local report card the list of schools identified for improvement, corrective action, or restructuring and make the information generally available to the public.</p>	<p>➤ LEA is no longer required to identify schools for improvement, corrective action, or restructuring based on assessments administered in the 2011–2012 school year.</p> <p>➤ Instead, SEA must identify priority, focus, and reward schools in the State for the 2012–2013 school year, consistent with ED’s definitions of these terms, based on assessments administered in either the 2011–2012 school year or the 2010–2011 school year.</p> <p>➤ LEA must report on its local report card the priority, focus, and reward schools, if any, in the LEA and make the information generally available to the public.</p>
4-84.010-13	<p>➤ SEA must identify LEAs for improvement or corrective action, consistent with section 1116 of ESEA, for the 2012–2013 school year based on assessments administered in the 2011–2012 school year.</p> <p>➤ SEA must report on its State report card the list of LEAs identified for improvement or corrective action, make the information generally available to the public, and report</p>	<p>➤ SEA is no longer required to identify LEAs for improvement or corrective action.</p> <p>➤ Some SEAs have chosen as part of their ESEA flexibility request to identify LEAs that meet State-defined criteria as low-performing.</p> <p>➤ SEA must report on its State report card the list of priority, focus, and reward schools and report the information to ED.</p>

Page number(s) in 2012 Compliance Supplement	Summary of ESEA requirement in the absence of ESEA flexibility the information to ED.	Summary of changes to requirement under ESEA flexibility
4-84.010-13 and 4-84.010-14	<ul style="list-style-type: none"> ➤ LEA and SEA must make AYP determinations for schools and LEAs, respectively, based on assessments administered in the 2011–2012 school year 	<ul style="list-style-type: none"> ➤ SEA had the option to request a waiver to no longer make AYP determinations for schools and LEAs as part of its ESEA flexibility request. ➤ AYP determinations based on assessments administered in the 2011–2012 school year are no longer required in an ESEA flexibility State whose SEA received this waiver.
4-84.367-1	<ul style="list-style-type: none"> ➤ LEAs that fail to make highly qualified teacher (HQT) annual measurable objectives (AMO) established under Section 1119(a)(2) for two consecutive years must develop an improvement plan that will enable them to meet the AMO. ➤ SEAs must provide LEAs with technical assistance to enable them to meet the AMOs described in section 1119(a)(2). ➤ LEAs that fail to make AYP for three consecutive years under Section 1111(b)(2)(B) of <i>Title I, Part A</i>, and in those same three years also fail to make HQT AMOs established under Section 1119(a)(2), must enter into an agreement with the SEA on the use of <i>Title II, Part A</i> funds. 	<ul style="list-style-type: none"> ➤ LEAs previously required to have improvement plans and/or agreements on the use of Title II, Part A funds in place are no longer required to do so, beginning in school year 2012-2013. ➤ The SEA is not required to provide LEAs with technical assistance to meet the HQT AMOs.
4-84.377-4	<ul style="list-style-type: none"> ➤ LEA may only apply to use SIG funds in a school identified by the SEA as a Tier I, Tier II, or Tier III school. 	<ul style="list-style-type: none"> ➤ SEA may award SIG funds to an LEA to implement one of the four SIG school intervention models in a school that the SEA has identified as a priority school under ESEA flexibility, even if that school is not otherwise identified as a Tier I or Tier II school.