



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

MEMORANDUM

DATE: September 23, 2011

TO: Sharon Mar  
Office of Information and Regulatory Affairs  
Office of Management and Budget

THROUGH: Stephanie Valentine  
Regulatory Information Management Services  
U.S. Department of Education

FROM: Michael Yudin  
Acting Assistant Secretary

SUBJECT: Emergency Clearance of Information Collection Requests for ESEA Flexibility

The U.S. Department of Education (ED) plans to offer each 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 will provide 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 accountability plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. 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 assessments; developing systems of differentiated recognition, accountability, and support; and evaluating and supporting teacher and principal effectiveness.

ED has developed the documents titled *ESEA Flexibility* and *ESEA Flexibility Request* to assist SEAs with submitting their requests, which include information collection activities covered by the Paperwork Reduction Act (PRA). The information collection activities related to this flexibility are the information an SEA must develop and submit to ED to request this flexibility, amendments an SEA must submit to its Accountability Workbook, and the information an SEA that receives this flexibility must provide to ED on its implementation of the waivers. ED is requesting that the Office of Management and Budget (OMB) clear this information request on an emergency basis **by October 7, 2011.**

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ED needs emergency clearance in order to act now so that States may smoothly implement their ambitious reform plans without fear of the consequences imposed by the current law. Following normal clearance timelines would delay broad waiver relief until the 2012–2013 school year, which is too late to avoid the needless disruption threatened by the increasingly obsolete current law. Without emergency clearance, ED would be unable to approve requests for flexibility until too late to permit the start of meaningful implementation in the 2011–2012 school year. In order to make a meaningful impact on the 2012–2013 school year, SEAs and LEAs need to begin to undertake changes in the 2011–2012 school year such as resetting their annual measurable objectives, implementing certain activities related to the transition to college- and career-ready standards, and conducting in-depth planning for implementation of a differentiated recognition, accountability, and support system.

### **Overview of ESEA Flexibility**

This voluntary opportunity will provide educators and State and local leaders with flexibility regarding specific requirements of NCLB in exchange for rigorous and comprehensive State-developed accountability plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. 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 assessments; developing systems of differentiated recognition, accountability, and support; and evaluating and supporting teacher and principal effectiveness.

### **Emergency Clearance of Information Collection for ESEA Flexibility Requests**

The Department invites each interested SEA to request this flexibility pursuant to the authority in section 9401 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, 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. An SEA seeking approval to implement this flexibility must submit a high-quality request that addresses all aspects of the principles and waivers and, in each place where a plan is required, includes a high-quality plan.

A high-quality request will (1) if an SEA has already met a principle, provide a description of how it has done so, including evidence as required; and (2) if an SEA has not yet met a principle, describe how it will meet the principle on the required timelines, including any progress to date. In each such case, an SEA's plan must include, at a minimum, the following elements for each principle that the SEA has not yet met: key milestones and activities, detailed timeline, party or parties responsible, evidence, resources, and significant obstacles.

In sum, SEAs must submit a high-quality flexibility request that is comprehensive and coherent in its approach, and that clearly indicates how this flexibility will help an SEA and its LEAs improve student achievement and increase the quality of instruction for students. ED guidance will be an important tool to assist SEAs with preparing their requests.

**Emergency Clearance of Information Collection for SEA Reports on Compliance with ESEA Flexibility Principles**

An SEA that receives approval to implement this flexibility must report to ED at least annually on its progress in implementing its plans. This reporting must include a summary of progress such as data and evidence demonstrating that the SEA implemented key activities and reached significant milestones according to the timelines laid out in its request.

**Emergency Request**

**We are requesting that OMB clear this information request on an emergency basis by October 7, 2011 so that SEAs may respond to ED's invitation by requesting the waivers and receiving the relief they need as soon as possible.**

Over the past few years, States and districts have initiated groundbreaking reforms and innovations to increase the quality of instruction and improve academic achievement for all students. Forty-four States and the District of Columbia have adopted a common set of State-developed college- and career-ready standards, and 46 States and the District of Columbia are developing high-quality assessments aligned with these standards. Over forty States are developing next-generation accountability and support systems, guided by principles developed by the Council of Chief State School Officers. Many States are also moving forward with reforms in such areas as teacher and principal evaluation and support, turning around low-performing schools, and expanding access to high-quality schools.

Many of these innovations and reforms, however, were not anticipated when the No Child Left Behind Act of 2001 (NCLB) was enacted nearly a decade ago. While NCLB helped State and local educational agencies (SEAs and LEAs) shine a bright light on the achievement gap and increased accountability for groups of high-need students, it inadvertently encouraged some States to set low academic standards, failed to recognize or reward growth in student learning, and did little to elevate the teaching profession or recognize the most effective teachers. Instead of fostering progress and accelerating academic improvement, many NCLB requirements have unintentionally become barriers to State and local implementation of forward-looking reforms designed to raise academic achievement. Consequently, many States are petitioning ED for relief from the requirements of current law. One of the Secretary's highest priorities is to help ensure that Federal laws and policies can support these reforms and not hinder State and local innovation aimed at increasing the quality of instruction and improving student academic achievement.

For these reasons, ED is offering each SEA the opportunity to request flexibility on behalf of itself, its LEAs, and its schools, in order to better focus on improving student learning and increasing the quality of instruction. ED needs emergency clearance to begin this important process immediately.

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Thank you for your prompt consideration of this request. If you have questions, please contact Todd Stephenson of my staff at (202) 205-1645 or [Todd.Stephenson@ed.gov](mailto:Todd.Stephenson@ed.gov).