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Elementary and Secondary Education: Accountability and Flexibility in Federal Aid Proposals

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Wayne Clifton Riddle
Specialist in Education Finance
Domestic Social Policy Division

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Summary

The 107th Congress is considering proposals to amend the Elementary and Secondary Education Act (ESEA). Much of the debate over these proposals has been focused on issues related to state and local accountability for, and flexibility in the use of, federal aid funds. Current federal elementary and secondary education assistance programs have a broad range of accountability requirements, including: targeting of resources on specific “high need” pupil groups, localities, or schools; limitations on the authorized uses of funds; fiscal accountability requirements, such as maintenance of effort; procedural requirements, such as parental participation or equitable treatment of pupils attending non-public schools; staff qualifications; reporting; outcome; and evaluation requirements.

Beginning in 1994, several authorities have been adopted that provide expanded flexibility in the use of federal aid. The 106th Congress adopted legislation that modified and expanded eligibility for the Ed-Flex program, in which authority to grant waivers is provided to state educational agencies, and provided a new authority for small, rural local educational agencies (LEAs) to transfer funds among selected ESEA programs. During the 107th Congress, the House and Senate have passed different versions of H.R. 1, legislation to amend and extend the ESEA, with new forms of both outcome accountability and flexibility authority. Both bills would expand requirements for pupil assessment, and for standards for adequate yearly progress plus performance-based awards and sanctions for schools, LEAs, and states. The House version of H.R. 1 would also authorize all states and LEAs to transfer funds among selected programs, and authorize a broader program consolidation authority for up to 100 LEAs; while the Senate version would authorize up to seven states and 25 LEAs to eliminate a wide range of program requirements in return for increased accountability in terms of pupil outcomes.

Debate over the optional performance agreement/grant consolidation proposals in particular has sometimes been contentious, mainly because they would replace the current relatively wide range of types of accountability provisions with a strategy of accountability established almost totally on the basis of pupil achievement outcomes. These proposals implicitly place substantial emphasis on adoption and implementation by the states of challenging standards and assessments in order to establish a basis for meaningful outcome accountability.

Supporters of proposals to increase state and LEA flexibility in the use of federal aid argue that the current accountability requirements are unnecessarily burdensome and rigid, and detract attention from the goal of increasing academic achievement. In response, opponents of these proposals argue that aspects of accountability, in addition to those related to outcomes, are important federal priorities, that many of the non-outcome related accountability requirements may already be waived if deemed burdensome, and that there is little assurance that state-determined performance goals will be challenging.

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Elementary and Secondary Education: Accountability and Flexibility in Federal Aid Proposals

Introduction

The 107th Congress is considering proposals to extend and amend the Elementary and Secondary Education Act (ESEA). Much of the debate over these proposals has been focused on issues related to state and local accountability for, and flexibility in the use of, federal aid funds. This report provides an overview of current and proposed provisions for state and local flexibility and accountability for the ESEA and related federal programs. It will be updated to incorporate major new proposals and legislative activity in the 107th Congress.¹

It is important to begin this discussion by defining key terms. In this report, “accountability” is defined broadly to include all major types of requirements which must be met by state and local recipients of funds under federal K-12 education aid programs. Such requirements, whether they derive from statutory provisions, Department of Education (ED) regulations or similar guidance, are implicitly intended to assure that federal aid funds are used in accordance with congressional intent and program goals. Thus, the terms “current accountability provisions” and “current program requirements” will be used interchangeably in this report. As is described below, these current requirements may focus on several aspects of a program, including, but not limited to, academic achievement outcomes for participating pupils. This breadth of meaning is one source of occasional confusion in discussions of accountability regarding the ESEA, especially since some observers tend to place much greater emphasis on, or attach greater importance to, some forms of accountability than others, and there are often multiple views regarding what precisely are the goals of federal programs.

“Flexibility” is defined for purposes of this report as authority under which federal program requirements, particularly restrictions on the use of federal aid, may be waived by, or on behalf of, state or local aid recipients meeting certain eligibility criteria, sometimes in return for meeting new accountability requirements related to program outcomes. This includes provisions or proposals for consolidation of multiple programs, or for transfer of funds among programs, so that funds may be used for a broader range of activities or purposes than ordinarily would be allowed. A basic question addressed (either explicitly or implicitly) by all proposals for

¹For general information on the status of ESEA reauthorization legislation and related issues, see CRS Issue Brief IB10066, *Elementary and Secondary Education: Reconsideration of the Federal Role by the 107th Congress*, by Wayne Riddle.

increased flexibility is what types of new accountability requirements (if any), often expressed in terms of pupil achievement outcomes, must be met by state and local grantees seeking increased flexibility in the use of federal funds.

It should also be noted that while terms such as “flexibility” and “accountability” have essentially positive connotations, there may be negative aspects of these concepts, at least in the view of some analysts, if only as a result of unintended consequences. For example, according to this view, “flexibility” may result in less targeting of limited federal aid on high need pupil groups, while “accountability” provisions may be so numerous and detailed as to significantly reduce the effective use of federal aid funds.

Nature of Current Program Requirements/Accountability Provisions

Current accountability-related provisions in federal K-12 education assistance programs include a broad range of activities, services, or outcomes which states, local educational agencies (LEAs), and other aid grantees are expected to provide, perform, or achieve with or in return for, federal grants, in order to show evidence that program goals are being met. The varieties of accountability provisions in current programs or proposals may be divided into the following general categories:

- Targeting of resources on specific “high need” pupil groups or types of localities or schools,
- Limitations on the authorized uses of funds,
- Fiscal accountability, such as requirements that federal funds supplement, not supplant, state and local resources,
- Procedural requirements, such as parental participation or equitable treatment of pupils attending non-public schools,
- Staff qualifications,
- Reporting to parents and the general public of information on program activities and their impact,
- Student achievement and other outcomes, and
- Evaluation.

The current ESEA includes aspects of each of these categories of accountability, although only a few of the ESEA’s largest programs include accountability requirements in *all* of these categories. Typically, current ESEA requirements are most extensive in the categories of *resource targeting*, *fiscal accountability*, and such *procedures* as parental participation and services to private school pupils. Current *limitations on the use of funds* and *evaluation* are also often substantial, while requirements in the category of *staff qualifications* are usually very limited. Requirements regarding *outcomes* and *reporting* are incompletely implemented and are limited largely to ESEA Title I (Education for the Disadvantaged). These outcome and reporting requirements are relatively new, arising primarily from the 1994 amendments which required states participating in Title I to develop or adopt curriculum content standards, pupil performance standards, and assessments linked to these, at least in the subjects of mathematics and reading/language arts. The

general deadline for states to develop and implement their standards and assessments is the current (2000-2001) program year. Thus far, assessment “evidence” had been submitted by all states, and ED has fully reviewed and formally responded to all but four states plus the District of Columbia regarding the “evidence” they submitted on their assessment systems. The assessments of 13 of these states have been fully approved, those for four other states have been conditionally approved, while 24 states and Puerto Rico have requested and/or been granted timeline waivers, and five have been asked to enter into compliance agreements.²

Current Provisions for Flexibility in the Use of Federal Aid

While a number of requirements apply to the use of federal K-12 education aid, as outlined above, all states and LEAs are given wide scope in other aspects of the use of federal grants. Such matters as grade levels, subject areas, instructional techniques, and staff have typically been left to state and local discretion. Exceptions to this pattern have been relatively few — e.g., the requirement that most grantees under the Bilingual Education Act (BEA) use bilingual instructional techniques — and have applied largely to competitive programs that constitute a very small share of ESEA funds.

In addition, especially in the period beginning in 1994, several authorities have been adopted which allow the waiver of many types of federal K-12 program requirements by, or on behalf of, states and LEAs. Each of them is limited with respect to either the types of requirements which can or cannot be waived, the specific ESEA and other programs affected, or the number of states which are currently eligible. Some require waivers to be requested on a case-by-case basis, while others offer “blanket” waiver authority. Further, some of these authorities require some form of additional accountability in terms of pupil outcomes, while others do not.

In addition to two general types of waiver authorities, Ed-Flex and case-by-case, an exceptional degree of school-level flexibility in the use of funds under several federal programs is provided under the schoolwide program authority under ESEA Title I, and a new authority for flexibility in small, rural LEAs was recently adopted as part of FY2001 appropriations legislation for ED. These five types of special flexibility are described below.

Ed-Flex. Under Ed-Flex, ED is authorized to delegate to eligible state education agencies (SEAs) authority to waive a range of requirements under selected ESEA programs, on behalf of LEAs or schools in that state. Ed-Flex authority was initially authorized for up to six states in the 1994 Goals 2000: Educate America Act. It was expanded to a maximum of 12 states in 1996 (P.L. 104-134). It was modified, and the cap on the number of participating states was removed, by the Education Flexibility Partnership Act of 1999 (P.L. 106-25).

²See CRS Report RL30742, *Assessment Requirements Under ESEA Title I: Implementation Status and Issues*, by Wayne Riddle.

The original Ed-Flex authority was granted to 12 states, and seven states (DE, KS, MA, NC, OR, PA, and TX, four of which had authority under the original Ed-Flex legislation) have thus far been granted Ed-Flex status under the P.L. 106-25 authority. Participating states must commit themselves to waiving state, as well as federal, requirements affecting LEAs and schools in the state. States must also meet the requirements for adoption of curriculum content and pupil performance standards, and assessments linked to these, under ESEA Title I. States are to monitor the performance of LEAs and schools for which federal or state requirements are waived, and submit annual reports on these outcomes to ED. Ed-Flex authority may be granted to a state for up to 5 years.

The federal programs to which Ed-Flex applies are ESEA Titles:

- I (Helping Disadvantaged Children Meet High Standards),
- II (Dwight D. Eisenhower Professional Development Program),
- III-A-2 (Technology for Education of All Students),
- IV (Safe and Drug-Free Schools and Communities),
- VI (Innovative Education Program Strategies),
- VII-C (Emergency Immigrant Education Act), and
- The Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act). These include all of the ESEA programs which are administered via SEAs and which allocate funds by formula (“state-administered programs”).

The types of requirements which may **not** be waived by Ed-Flex states, unless the underlying purposes of the statutory requirements are otherwise met to the satisfaction of the Secretary of Education, include those related to: (1) fiscal accountability (e.g., requirements for LEAs or SEAs to maintain their level of spending for specified educational services; to use federal aid only to supplement, and not supplant, state and local funds for specified purposes; or to provide state and local funding which is comparable in all schools of a LEA), (2) equitable participation by private school pupils and teachers, (3) parental involvement in program activities and services, (4) allocation of funds to states or LEAs, (5) certain ESEA Title I school selection requirements, and (6) applicable civil rights requirements.

With the exception of statewide “blanket” waivers for which individual LEAs need not apply, LEAs or schools requesting waivers in Ed-Flex states must apply to their SEA, providing information analogous to that required for LEAs requesting waivers directly from ED (see below). SEAs may not waive requirements applicable to the SEAs themselves. In all cases, SEAs must be satisfied that “the underlying purposes of the statutory requirements of each program or Act for which a waiver is granted continue to be met.” Local waivers are to be terminated if student performance has been inadequate to justify their continuation, or performance has declined for 2 consecutive years (unless there are exceptional or uncontrollable circumstances). States are required to submit annual reports on waivers they have granted; beginning with the second annual report, information on the effects of waivers on student performance must be included.

Case-by-Case Waiver Authorities. A second type of federal education program flexibility authority consists of waivers that may be granted to SEAs or

LEAs on a case-by-case basis, directly by the Secretary of Education. While there are at least three such authorities affecting K-12 education programs, the following discussion will focus primarily on the most broadly applicable and frequently utilized of these, which is in Title XIV, Part D of the ESEA. Under this provision, the Secretary of Education is authorized to waive most requirements associated with any program authorized by the ESEA. The waivers must be specifically requested, and the proposal must include “specific measurable educational improvement goals and expected outcomes” for pupils eligible to be served by the relevant programs.

In addition to the different scope of coverage (i.e., all ESEA programs under the ESEA Title XIV case-by-case waiver authority versus only ESEA and related state-administered programs under Ed-Flex), two types of requirements may not be waived under the ESEA Title XIV case-by-case waiver authority (in addition to those which cannot be waived under Ed-Flex): (1) prohibitions against consideration of ESEA funds in state school finance programs, and (2) prohibitions against use of funds for religious worship or instruction. At the same time, the restrictions on waiving ESEA Title I school selection requirements under ED-Flex do *not* apply to the case-by-case waiver authority in Title XIV, Part D. ESEA Title XIV has no authority analogous to the Ed-Flex provision that additional requirements may be waived if the underlying purposes of the statutory requirements continue to be met to the satisfaction of the Secretary.

Waivers granted under the authority of ESEA Title XIV, Part D, may not exceed 3 years, except that they may be extended if the Secretary determines that the waiver has contributed to improved pupil performance. In contrast, waivers are to be terminated if the Secretary determines that pupil performance or other outcomes are inadequate to justify continuation of the waivers. LEAs and SEAs which receive waivers must submit annual reports that describe the effects of the waivers and evaluate their impact on pupil performance, beginning the second year the waiver is in effect. The Secretary is required to submit to Congress annual reports on the effects and effectiveness of waivers that have been granted.

A second case-by-case waiver authority affects only schools participating in the Public Charter Schools (PCS) program authorized by ESEA Title X, Part C. A distinctive aspect of the PCS waiver authority (ESEA Section 10304(e)) is that none of the limitations on types of requirements that may be waived, as listed above for Ed-Flex and the ESEA Title XIV waiver authority, apply to the PCS waiver authority. Under the PCS authority, any requirement over which the Secretary of Education “exercises administrative authority” may be waived, with the sole exception of requirements associated with the definition of a charter school eligible to receive PCS funds (ESEA Section 10310(1)). However, this authority has apparently not been used, and therefore will not be discussed further in this report.

School-Level Flexibility: ESEA Title I Schoolwide Programs.

Schools participating in the ESEA Title I program at which 50% or more of the pupils are from low-income families are eligible to conduct *schoolwide programs* with a very broad and substantial degree of flexibility in the use of funds under almost all federal education programs. In a schoolwide program, federal aid provided under Title I plus almost all other federal K-12 education programs may be used to improve services to *all* pupils, rather than limiting services to particular pupils deemed to be the most

disadvantaged. If they meet the intent and purposes of Title I and the other federal programs, and address the needs of the programs' intended beneficiaries, schoolwide programs are exempted from regulations under Title I and most other programs, with specified exceptions, such as regulations regarding health, safety, civil rights, parental participation, services to private school pupils and teachers, or fiscal accountability. Title I and other federal program funds must be used so that they supplement, and do not supplant, other federal and non-federal funds that the school would otherwise receive. Further, only commingling or flexibility in the use of funds is authorized with respect to the IDEA in schoolwide programs; all of the IDEA's programmatic requirements must still be met.

There are relatively few additional requirements which schoolwide programs are required to meet in return for this increased flexibility. The number of schoolwides has grown rapidly in recent years, and most pupils served by Title I are now in schoolwide programs. In addition, many of the Ed-Flex and other waivers granted since 1994 have allowed schools below the 50% threshold to operate schoolwide programs.

Flexibility for Small, Rural LEAs. P.L. 106-554, Consolidated Appropriations Act 2001, provides a new form of flexibility under which small, rural LEAs may transfer funds among selected ESEA programs. Under this Rural Education Achievement Program (REAP), LEAs with enrollment below 600 pupils and in which all schools are rural may use any funds received under ESEA Titles II (Eisenhower Professional Development Program), IV (Safe and Drug-Free Schools and Communities), and VI (Block Grant) for activities under ESEA Titles I (Education for the Disadvantaged), II, III (Technology), and IV.

Finally, a number of additional provisions have been adopted in recent years which are sometimes cited as providing increased flexibility to states and LEAs. These are not discussed in detail here because their potential impact is substantially more marginal than those of the flexibility authorities described above, and/or their impact is primarily in the area of administrative convenience. These additional forms of flexibility include authority for consolidated SEA or LEA applications, plans, or reports for a number of ESEA and related programs; authority to consolidate certain funds used for SEA or LEA administration of federal programs; and authority to transfer up to 5% of funds among ESEA programs (except Title I). These authorities are provided in Parts B and C of ESEA Title XIV.

The Current Federal K-12 Education Block Grant: ESEA Title VI. Finally, one individual ED program is worthy of mention in the context of special forms of flexibility for states and LEAs in the use of federal aid funds — the ESEA Title VI block grant program. Block grants are aid programs covering an exceptionally wide range of educational activities and types of students, and providing a great deal of flexibility to states and LEAs in using the funds. They are often constructed through consolidation of a number of preceding programs that are more limited in the purposes or activities they support. This program was first enacted in 1981 (P.L. 97-35) as Chapter 2, Education Consolidation and Improvement Act (ECIA), which consolidated more than 40 previous federal programs. It was amended most recently in 1994, under P.L. 103-382, as Title VI of the ESEA, Innovative Education Program Strategies. Under Title VI, at least 85% of each state

grant must be allocated to LEAs, where funds are to be used for eight types of “innovative education programs.”

The ESEA Title VI block grant initially reduced the number of federal education programs. However, many new categorical programs were authorized in the years immediately following adoption of Title VI, including some that were essentially direct successors to programs initially consolidated into the block grant (e.g., aid for magnet schools). The most recent study by ED of the program (*Study of Educational Resources and Federal Funding: Final Report*, August 2000) found that 58% of recipient LEAs used “a great deal” of their Title VI funds for instructional materials, while 39% of LEAs used substantial funds for educational technology, and 34% of LEAs for supplemental targeted academic services. Large LEAs were found to be especially likely to use Title VI funds for teacher professional development services and school-based improvement efforts. It was also reported that the primary factors influencing decisions on the use of Title VI funds were long-term LEA plans and the priorities of individual schools; and Title VI-funded resources or services were rarely targeted at particularly high need pupils or schools.

Appropriations have declined significantly over the life of Title VI, from \$442 million in FY1982, the first year of funding, to \$385 million for FY2001. With adjustment for inflation, this is a decline of approximately 50%. It might be said that this reduction in the level of funding for Title VI ultimately limited the state and local flexibility that the program was meant to enhance. Programs such as Title VI have tended to receive less favorable treatment in funding than programs that could demonstrate targeting of funds, or improved educational outcomes, for high need pupil groups, and there have been few constituencies promoting increased funding for the program, in spite of the popularity of Title VI with state and local education officials. Limited information on the *effects* of Title VI services may also have reduced incentives to maintain the program’s funding level. A final note regarding ESEA Title VI — in ED appropriations acts for FY1999-2001, funds have been appropriated under this Title for class size reduction, school renovation, and other activities which are not specifically authorized under the ESEA. Since these are not part of the ESEA statute, and are not block grants, they will not be discussed further in this report.

Legislation in the 107th Congress: H.R. 1

The 107th Congress is considering proposals to amend and extend the ESEA. On June 14, 2001, the Senate passed its version of H.R. 1, the “Better Education for Students and Teachers (BEST) Act,” while the House passed its version of H.R. 1, the “No Child Left Behind Act of 2001,” on May 23. A conference committee is currently developing a compromise version of this legislation. As is discussed below, the House and Senate versions of H.R. 1 contain a number of provisions regarding accountability and flexibility in ESEA programs.

New or Expanded Accountability Provisions

Assessments. Both versions of H.R. 1 would expand current Title I assessment provisions by requiring states to assess all pupils in reading and mathematics each year in grades 3-8, and to develop standards in science, in addition to current requirements to develop standards plus assessments in reading and mathematics. Both versions would also generally require states, with selected exceptions, to participate in annual administration of National Assessment of Educational Progress (NAEP) 4th and 8th grade reading and mathematics tests, with costs paid by the federal government. They would require pupils who have been in U.S. schools for at least 3 years to be tested (for reading) in English. Finally, both versions of H.R. 1 would authorize grants to states for assessment development and administration at \$400 million for FY2002 and “such sums as may be necessary” thereafter.

In addition, the **House** version of H.R. 1 (only) would: allow states to participate in other independent assessments meeting certain criteria as a substitute for participation in NAEP; authorize one-time awards to states which implement the expanded assessment requirements more expeditiously than required; require states to annually assess the English language proficiency of their limited English proficient (LEP) pupils; allocate state assessment development grants for FY2002, with 50% of these funds to be allocated equally among the states and 50% to be allocated in proportion to school-age (5-17 years) population; and authorize a study of the effects of testing on students.

The **Senate** version of H.R. 1 would: not allow states to administer alternative tests as a substitute for participation in NAEP, but would allow the smallest (in population) states to participate in NAEP tests only once every 2 years; require states to adopt standards *and* assessments in science, plus standards, but *not* assessments, in history; make the expanded testing requirements contingent upon appropriation of specified amounts for state test development grants (a minimum of \$370 million for FY2002); allocate state assessment development grants with each state to initially receive \$3 million and remaining funds to be allocated in proportion to public school enrollment in grades 3-8; require assessments to be of “adequate technical quality,” and authorize grants to states for the development of high quality assessments; direct the General Accounting Office to conduct a study of the costs to states of complying with the Title I assessment requirements; authorize a National Academy of Sciences evaluation of the impact of high stakes pupil tests; and authorize grants to states and LEAs for development of enhanced assessment instruments.

Adequate Yearly Progress. Under both versions of H.R. 1, a key concept in the proposals for expanded accountability based on pupil outcomes is “adequate yearly progress” (AYP): state standards embodying expectations for increased academic achievement by all pupils. These standards are to serve as the basis for identifying schools and LEAs where performance is inadequate, so that these inadequacies may be addressed first through provision of increased support and, ultimately, “corrective actions.” Under the **House** version of H.R. 1, AYP standards would apply specifically to economically disadvantaged pupils, LEP pupils, pupils with disabilities, pupils in major racial and ethnic groups, as well as all pupils, in each

public school, LEA, and state. AYP standards must provide for each pupil in the state to reach at least the proficient level of achievement by a target year that cannot be more than 12 years after enactment. For a school to meet AYP standards, 95% or more of relevant pupils must be assessed.

Under the **Senate** version, AYP standards would also have to be established for each school, LEA, and the state overall. They must apply specifically to economically disadvantaged pupils, LEP pupils, pupils with disabilities, migrant pupils, pupils in major racial and ethnic groups, and pupils by gender, as well as all pupils, in each public school, LEA, and state, although states may combine results for these groups into a single formula. Further, an alternative form of AYP standard may be selected by states, under which a state, LEA, or school must achieve an increase of at least one percentage point in the percentage of students meeting the proficient level of performance in reading and math for each of the pupil groups noted above (other than the gender and migrant status groups). AYP standards must provide for each pupil in the state to reach at least the proficient level of achievement within 10 years. For a school to meet AYP standards, 95%+ of relevant pupils must be assessed.³

Report Cards. Both versions of H.R. 1 would establish new or expanded requirements for reporting to parents and the public on state, LEA, and school performance and teacher quality in schools. Under both bills, these “report cards” would be required to provide, at a minimum, for each LEA and school, information on pupil achievement levels, the percentage of pupils tested, other indicators used to determine AYP, school graduation and dropout rates, teacher qualifications, and identification of schools and LEAs which fail to meet AYP requirements.

Consequences for Failure to Meet AYP Standards. Under the **House** version of H.R. 1, LEAs would be required to identify schools which fail to meet AYP standards for 1 year. Such schools and LEAs are to receive technical assistance. States and LEAs must adopt one or more of a limited number of corrective actions if schools fail to improve 1 year after being identified for program improvement. *Public* school choice options must be offered to pupils of all schools identified for corrective action, unless prohibited by state law. If a school fails to meet AYP requirements after 2 years in corrective action (1 year if no measurable progress is made), the school must undergo “restructuring” — one of a limited number of actions must be taken, and pupils from *low-income families* in the school must be given an opportunity to obtain supplemental educational services from a provider of choice. Costs for supplemental services would be limited to 40% of the school’s Title I grant per low-income pupil. Comparable provisions apply to LEAs which fail to meet AYP standards. Finally, states would be required to establish a single accountability system for Title I and general purposes.

Under the **Senate** version of H.R. 1, LEAs would also identify for school improvement all schools which fail to meet AYP standards for 1 year, with such schools to receive technical assistance. If an identified school fails to meet the state’s

³For additional information on this topic, see CRS Report RL31035, *Adequate Yearly Progress Under the ESEA: Provisions, Issues, and Options Regarding House and Senate Versions of H.R. 1*, by Wayne Riddle.

AYP standards for a second consecutive year, pupils in the school would be offered the choice to attend other public schools not so identified, unless such options are prohibited by state or local law, or there are capacity constraints. States and LEAs must adopt corrective actions if schools fail to improve 2 years after being identified for program improvement. One of a limited number of actions (implementation of alternative governance mechanisms such as reopening as a charter school, replacement of relevant school staff, or application of a new curriculum) must be taken with respect to schools identified for corrective action. If such a school fails to meet AYP requirements for 3 consecutive years after identification, public school choice options must be offered with none of the constraints noted above, and *all pupils eligible to be served under Title I* pupils must also be offered the choice of obtaining supplemental instructional services from a provider other than their school. Costs for supplemental services are limited to the school's Title I grant per low-income pupil, and no school may lose more than 15% of its total Title I grant.

If, during the year following identification for corrective action, a school still fails to meet AYP standards, it would be "reconstituted," defined as replacement of all school staff, reopening as a charter school, or implementation of alternative governance arrangements. Some of these requirements may be waived for certain rural LEAs and/or if supplemental services providers are not "reasonably available geographically." Comparable provisions apply to LEAs which fail to meet AYP standards. Finally, states must establish a single accountability system for Title I and general purposes.

Performance-Based Bonuses and Sanctions. In addition to provisions specific to ESEA Title I (see above), **both** versions of H.R. 1 would authorize bonus payments to states which are especially successful in improving the academic achievement of economically disadvantaged pupils and pupils from racial and ethnic minority groups, as well as all pupils and LEP pupils. States would distribute these funds to schools on the basis of the same criteria. In addition, the **Senate** version of H.R. 1 would authorize a separate series of bonus grants directly to schools which have made the greatest progress in the education of economically disadvantaged pupils, and awards for other activities other than the activities such as character education and the identification and recognition of exemplary schools and programs such as Blue Ribbon Schools.

New or Expanded Flexibility Authorities

In addition to current flexibility authorities, described above, **both** versions of H.R. 1 would reduce the ESEA Title I schoolwide program eligibility threshold to 40%, and would explicitly reauthorize, in essentially its current form, the special flexibility authority for rural LEAs, currently authorized by P.L. 106-554 (described in the next major section of this report). Further, the **Senate** version of H.R. 1 would explicitly reauthorize the current Ed-Flex and case-by-case ESEA waiver authorities without substantial modification, while the House version would not explicitly amend these provisions, implicitly leaving them in place. The net effect would be to continue these authorities in essentially their current form in both cases, except that the Senate version would extend the Ed-Flex authority through FY2008 (rather than FY2004 under P.L. 106-25).

The House or Senate versions of H.R. 1 would also authorize three new forms of flexibility authority, as described below.

Transferability Authority. The **House** version of H.R. 1 contains a new authority (as ESEA Title VII, Part B) for states and LEAs to transfer funds among several ESEA state-administered formula grant programs. The programs potentially affected by this provision are ESEA Titles I (Improving the Academic Performance of the Disadvantaged), II (Preparing, Recruiting, and Training Quality Teachers), IV-A (Innovative Programs), V-A (Supporting Violence and Drug Prevention and Academic Enrichment), and V-B (Enhancing Education Through Technology), except that *funds could only be transferred into, and not away from, ESEA Title I.*

States could transfer up to 50% of the program funds *over which they have authority*, except for administrative funds. Thus, states could *not* transfer either any of the funds they are required to suballocate to LEAs or funds reserved for state administration. Most *LEAs* could transfer up to 50% of the funds they receive under the affected programs. However, LEAs identified as needing improvement (because they failed to meet AYP requirements) could transfer only up to 30% of their grants under the affected programs, and only if the funds were used for school/LEA improvement.

Under this authority, unlike the two proposals described immediately below, all program requirements would continue to apply to the transferred funds, and all of the affected programs would continue to exist in places where the authority is exercised, since no state or LEA could transfer more than 50% of its funds out of any program.

Local Flexibility Demonstration. The **House** version of H.R. 1 would further authorize (as ESEA Title VII, Part C) a local flexibility demonstration under which 100 LEAs would be permitted to consolidate funds from a group of ESEA programs. During the first 3 years, no more than two LEAs per state could receive this flexibility authority; afterward, if fewer than 100 LEAs receive the authority, the limitation on the number of participating LEAs per state would be lifted. In order to qualify, LEAs must meet state AYP standards and submit to the U.S. Secretary of Education a proposed performance agreement developed in consultation with local parents and educators. Performance agreements would cover a 5-year period, and describe how the consolidated funds will be used to support the educational priorities of the LEA and state, meet the general purposes of the affected programs, improve achievement, and reduce achievement gaps among groups of pupils.

The programs affected by this local flexibility demonstration authority include all of the programs subject to the transferability authority described above *except* ESEA Title I. Participating LEAs would be allowed to consolidate funds under the affected programs and use them for any educational purpose authorized under the ESEA (i.e., not just the activities authorized by the programs whose funds may be consolidated). Participating LEAs could use no more than 4% of the funds under the affected programs for administration. Unlike the transferability authority described above, no program requirements would apply to the use of these consolidated funds, except requirements related to civil rights and equitable participation by private school pupils and staff.

Participating LEAs would be required to submit annual reports on their use of funds consolidated under this demonstration authority. They would lose their authority if they failed to meet the goals of their performance agreements, or if they failed to meet AYP standards for 3 consecutive years. If LEAs substantially met the goals established in their agreements, their authority would be renewed for another 5-year term. Thus, under this authority, the performance requirements for participating LEAs (other than those that would be applicable to all LEAs under H.R. 1) are the performance goals to be proposed by applicant LEAs to the Secretary of Education, and the sanction for failure to meet the terms of the agreement would be loss of the authority after 3-5 years.

In comparison to the performance agreement authority in the Senate version of H.R. 1 (see below), this local flexibility demonstration authority is more limited in the range of programs potentially affected, but more broad in the types of current program requirements that would be waived for participating LEAs, and has relatively fewer specific performance requirements or sanctions for failure to meet those requirements. In terms of the scope of potential participation, only the Senate provision would allow for entire states to participate (up to seven), while the House provision would allow more individual LEAs to participate (100 vs. 25). In either case, the scale of potential participation could be relatively small or large, depending on the population size of specific LEAs and states that qualify.

Performance Agreement Authority. The Senate version of H.R. 1 contains a performance agreement authority (as ESEA Title V, Part F) under which a limited number of states and individual LEAs could eliminate a wide range of program requirements under several ESEA programs. This is a substantially more limited version of the optional performance agreement/grant consolidation proposals considered by the 106th Congress (see the following major section of this report).

Potential Scope. The performance agreement authority could be granted to a maximum of seven states plus 25 LEAs in non-participating states. Individual LEAs would have to notify, but would not be required obtain permission from, their state in order to participate. At the same time, individual LEAs in participating states could request a waiver to opt out of a statewide performance agreement.

Outcome Accountability. The additional element of outcome accountability required of participating states and LEAs (beyond what is required of all states and LEAs under H.R. 1) is that they must *exceed* AYP goals by a *statistically significant amount*. This would mean that achievement gains in excess of those required under state AYP standards must be sufficiently large that they are unlikely to have resulted from random variations in pupil achievement scores. While statistically significant, such an amount would not necessarily be large, especially in a state or LEA with a large pupil population.

Allocation of Funds. Under the performance agreement authority, states could reallocate funds among LEAs to a limited degree, with particular constraints regarding Title I grants. Participating states and LEAs would be required to allocate ESEA Title I funds to LEAs and schools in accordance with all regular requirements *unless* the state or LEA develops an alternative allocation mechanism that would “better target poverty or educational need.” A specific standard for such “better

targeting” is provided in the case of allocation of funds *to LEAs*: the alternative formula must provide a higher percentage (presumably of the state total allocation) of funds than the statutory formulas to each LEA meeting the Concentration Grant eligibility criteria (15% or 6,500). LEAs meeting these criteria are not necessarily “high poverty” LEAs — approximately 51% of all LEAs, with approximately 84% of all school-age children in poor families, are in LEAs meeting one of these criteria.

The significance of this standard depends primarily on whether recent patterns, as opposed to the provisions of both versions of H.R. 1, characterize the allocation of ESEA Title I-A funds in general. As is discussed in detail in other CRS publications (CRS Report RL30491, *Education for the Disadvantaged: ESEA Title I Allocation Formula Provisions*; CRS Report RL30492, *Education for the Disadvantaged: Allocation Formula Issues in ESEA Title I Reauthorization Legislation*; and CRS Issue Brief IB10029, *Education for the Disadvantaged: ESEA Title I Reauthorization Issues*), four different formulas are authorized for the allocation of ESEA Title I-A funds, although only two of them — Basic and Concentration Grants — have ever been funded. Both versions of H.R. 1 would provide that appropriations above the FY2001 level be allocated as Targeted Grants, a third (unfunded) formula that would generally allocate higher shares of funds (in comparison to the currently funded Basic and Concentration Grants) to LEAs with the highest numbers or percentages of school-age children from poor families. However, similar provisions in current law have been overridden in appropriations legislation each year since 1995.

If recent patterns were to continue — i.e., the Targeted Grant formula remains unfunded, and allocations in general are substantially affected by high hold harmless rates — an alternative formula that meets the specific standard for better targeting under the performance agreement authority provisions of the Senate version of H.R. 1 would be at least as targeted on relatively high poverty LEAs as current allocation patterns. In other words, *as long as* only the Basic and Concentration Grant formulas are actually funded, the only actual targeting (in the sense of providing increased grants per formula child to LEAs with relatively high numbers or percentages of such children) is through the Concentration Grant formula, and the standard for an alternative intra-state Title I formula would, by definition, target poverty at least as well as that. Alternatively, *if* Targeted Grants were funded, as both versions of H.R. 1 attempt to require, then the statutory formulas for allocation to LEAs would target poverty concentrations better — i.e., provide higher shares of the state’s Title I-A grants to LEAs with the highest percentage or number of children from poor families — than the amendment’s standard for an alternative formula, because the Targeted Grant portion of funds would provide more funds to each state’s highest poverty LEAs than would be guaranteed under this amendment.

With respect to the allocation of ESEA Title I-A funds *to schools* within LEAs, no specific standard is provided for alternative allocation methods. It would presumably be left to the discretion of the U.S. Secretary of Education to determine whether an alternative method better targeted “poverty or educational need” among schools within LEAs. There is also no provision for targeting on concentrations of LEP or recent immigrant pupils (with respect to funds from the Bilingual or Immigrant Education programs that might be included in performance agreements).

For *non*-Title I, Part A, programs, funds must be allocated so that they serve “high concentrations of children from low-income families at a level proportional to or higher than the level that would occur without such consolidation.” Thus, states would still have a great deal of flexibility in allocating the funds from programs other than Title I, Part A, including such programs as Bilingual/Immigrant Education. However, again with the exception of the Bilingual and Immigrant Education programs, these funds are not sharply targeted on high need (poor, limited English proficient, or recent immigrant) pupils currently.

One general constraint that would apply to the allocation of funds under performance agreements is that in participating states, LEAs would have to be guaranteed to receive any projected continuation awards under affected programs with multi-year discretionary/competitive grants. However, since this would apply only to programs where funds are currently allocated to states by formula but within states through discretionary/competitive means (or perhaps also programs that are now competitive but would become formula grants under H.R. 1, such as Bilingual), the effect would be limited.

Authorized Uses of Funds. Funds could be used for activities authorized under any of the combined programs. While broad, this is more narrow than under the optional performance agreement/grant consolidation bills of the 106th Congress, under which funds could have been used for any educational purpose allowed under state law. SEAs could use up to 1%, and LEAs up to 4%, of the funds under consolidated programs for administration.

Most requirements regarding uses of funds in Title I, Part A schoolwide and targeted assistance programs would apply (with the schoolwide eligibility percentage reduced to 35%), as would the Title I requirements regarding standards, assessments, accountability, and parental involvement. In addition, program requirements related to equitable participation by private school pupils and staff, civil rights, teacher quality, development of English language proficiency among limited English proficient pupils, and certain other specific program requirements would continue to apply.

Applicable Programs. The authority would apply to most state-administered formula grant programs authorized by the ESEA, including such programs as Bilingual/Immigrant Education. Excluded state formula grants include the Migrant, Neglected/Delinquent, and Reading First programs.

Fiscal Accountability. The two main general fiscal accountability requirements, maintenance of effort (MOE) and supplement/not supplant, would apply. The MOE requirement for the state as a whole, at 100% of previous year spending, would be more strict than existing MOE requirements for the ESEA (which are 90%). However, in a participating state, MOE would apply only to state source revenues, with no MOE applicable to local source revenues in such states. In addition, the Title I comparability requirement would not apply.

Sanctions. If a state or LEA met its requirements to exceed AYP standards by a statistically significant amount, its performance agreement would be renewed for an additional 5-year period. If a participating state or LEA failed to *meet* AYP standards for 2 consecutive years, or failed to meet its performance goal of *exceeding*

AYP for 3 consecutive years, its flexibility authority would be terminated. In addition, if a state failed to meet its performance goal of *exceeding* AYP for 2 consecutive years, and students who are racial and ethnic minorities, and economically disadvantaged students, failed to make statistically significant progress, the amount of funds the SEA could use for administrative expenses (under the performance agreement) would be reduced by 30%. Other sanctions for states are already provided for all states under the Senate version of H.R. 1. Thus, there are few sanctions for states or LEAs failing to meet their performance goals other than loss of their flexibility authority.

Major Proposals for Increased Flexibility and Accountability in the 106th Congress

The 106th Congress considered several proposals to increase flexibility for states and LEAs under K-12 education aid programs in the context of legislation to reauthorize the ESEA. Two of these were enacted, and are discussed above: **P.L. 106-25**, which modified and expanded eligibility for the Ed-Flex program, and **P.L. 106-554**, which included a new authority for small, rural LEAs to transfer funds among selected ESEA programs. The following section discusses other relevant bills which were actively considered (i.e., reported by a committee of, and/or passed by, the House or Senate) by the 106th Congress: optional performance agreement/grant consolidation proposals, transferability proposals, additional rural flexibility proposals, and amendments to ESEA Title VI.

Optional Performance Agreement/Grant Consolidation Proposals

This relatively new type of proposal combines elements of traditional block grants and the Ed-Flex concept. During the 106th Congress, two basic variations of this category of proposal were embodied in H.R. 2300, the “Academic Achievement for All Act,” as passed by the House, and two different authorities under S. 2, the Educational Opportunities Act, as reported by the Senate Committee on Health, Education, Labor, and Pensions.

Under **H.R. 2300**, up to 10 states, or individual LEAs in non-participating states (if the state does not object) might have chosen to administer one or more specified programs under a *performance agreement*, whereby most of the statutory and regulatory program requirements would not apply. The programs to which this proposal applied were the federal elementary-secondary education aid programs administered through formula grants to the states (“state-administered programs”), including the Perkins Act, but excluding the Individuals with Disabilities Education Act (IDEA). Current program requirements regarding civil rights, participation of private school pupils and teachers, and certain fiscal accountability and ESEA Title I-A requirements regarding standards and assessments would have continued to apply. Otherwise, funds under the affected programs could have been used for “any educational purpose permitted by State law.”

Performance agreements under H.R. 2300 would have covered a 5-year period, and would have included: (a) a description of how funds would be used “to advance the educational priorities of the state, improve student achievement, and narrow achievement gaps between students;” (b) state-established student performance goals that “considered” changes in the performance in each LEA and school, and required increased performance by all pupil groups while reducing achievement gaps among pupils of different groups (by race, ethnicity, sex, English proficiency status, and socioeconomic status); (c) *if* ESEA Title I-A were included in the performance agreement, provisions meeting the current standards, assessment, accountability, and corrective action requirements of that program; and (d) provision for annual reporting of student performance data and information on how federal funds were used to meet the terms of the performance agreement.

Under H.R. 2300, state grants would have been determined under current allocation formulas, but funds could have been allocated within states as determined by the state legislature and Governor (or other entity responsible for education policy under state law), except that if ESEA Title I-A were included, LEAs would have continued to receive at least the amount of funds which they received under that program for the last year preceding implementation of the performance agreement. In any case, requirements regarding the allocation of funds to schools within LEAs under ESEA Title I-A and other programs would no longer apply. States or LEAs substantially meeting their goals would have been eligible for extension of their performance agreement for additional 5-year terms. If a state failed to meet at least 50% of its goals, it would have been subject to a 50% reduction in its federal administrative grants for 2 years. Alternatively, a participating state or LEA which reduced by 25% or more the gaps between its highest and lowest scoring population groups in the percentage of pupils at the “proficient” level would have been eligible for bonus funds.

Key aspects of H.R. 2300 included: (a) authority for participating states or LEAs to combine funds from affected programs and use them for any educational purpose under state law; (b) certain types of program requirements that cannot be waived currently, such as requirements regarding allocation of funds to or within LEAs, would have been waived under H.R. 2300; (c) outcome accountability requirements would have been more specific and extensive than those under Ed-Flex, although still essentially defined by the states; (d) bonus grants would have been authorized for states that reduced achievement gaps among groups of pupils, while states that failed to meet outcome goals would return to the standard program requirements and might have experienced a reduction in state administration funds.

The other 106th Congress legislation in this category on which action occurred, **S. 2**, would have provided **two different authorities** under which federal education program requirements might be eliminated in return for outcome-based accountability. *First*, S. 2 included a “performance agreement” authority which was essentially the same as that of H.R. 2300, except that it would have been available in up 15 states (rather than 10), the Perkins Act would not have been subject to consolidation, and participating states would have been required to reduce achievement gaps between the highest and lowest scoring pupil groups by at least 10% and to use funds to serve “disadvantaged schools and school districts.”

Second, S. 2 included a separate, somewhat less flexible “performance partnership” optional grant consolidation authority, which differed from the first authority in S. 2 in the following respects: (a) there would have been no limit on the number of states which could participate; (b) current ESEA Title I-A formulas would have continued to apply to the allocation of funds to LEAs and in general to schools as well (with the same degree of flexibility in this process which is now allowed in Ed-Flex states); (c) the Safe and Drug-Free Schools program would not have been subject to consolidation; (d) all states would have been eligible for bonus awards based on performance gains on National Assessment of Educational Progress (NAEP) tests; (e) all current provisions with respect to services for pupils and staff of private schools would have continued to apply; (f) an illustrative list of broad purposes for which funds may be used would have been provided; and (g) participating states would have been required to comply with all current requirements regarding fiscal accountability and parental involvement.

Fund Transferability Proposals

H.R. 4141, the Education Opportunities to Protect and Invest in Our Nation’s Students (Education OPTIONS) Act contained authority for states and LEAs to transfer funds among selected ESEA programs. The programs affected by the authority would have been the ESEA state-administered formula grant programs, except that funds could have been transferred only into, and not away from, ESEA Title I-A. States might have transferred all of the program funds over which they had authority, except for administrative funds. LEAs might have transferred up to 35% of funds they receive without obtaining state permission, and all funds under such programs if their state approved. This was a broader version, in terms of affected programs and eligible states or LEAs, of the kind of transferability proposal which was enacted (under P.L. 106-554) for small, rural LEAs.

Special Flexibility for Rural LEAs

In addition to the relatively limited authority described earlier, **H.R. 2** and **S. 2**, 106th Congress, included proposals to provide small and/or high-poverty rural LEAs with increased flexibility in their use of federal aid funds. These proposals addressed concerns that formula-based program allocations to rural LEAs are often so small that they can be of meaningful size and scope only if combined. The main difference between these proposals and the provisions enacted under P.L. 106-554 is that the former would have affected a larger number of rural LEAs because eligibility would have been based on poverty rates as well as enrollment size.

ESEA Title VI Block Grant

The 106th Congress also acted upon legislation which would have extended and amended the current ESEA Title VI block grant program. **H.R. 4141** would have revised the authorized uses of funds by LEAs to delete a general reference to school reform activities and to add: professional development and hiring of teachers; single gender schools and classrooms; community service programs; youth entrepreneurship education; consumer, economic, and personal finance education; public school choice programs; and school-based mental health services. **H.R. 4141** would also have

provided that 100% of all state Title VI grants above the FY2000 level must be allocated to LEAs. **S. 2** would also have extended and increased the authorization for the current Title VI block grant. The authorized uses of funds by LEAs would have been expanded to include: teaching improvement; parental and community involvement; recruitment and training of certified teachers; same gender schools and classrooms; service learning activities; and school safety programs. School reform and charter schools would no longer have been included on the list of activities authorized for LEAs.

Major Issues: Why Are Flexibility and Accountability the Focus of Much of the Debate Over Federal K-12 Education Programs?

There are at least two overarching reasons why flexibility and accountability are major legislative issues with respect to ESEA and other federal K-12 education programs. *First*, some analysts have criticized current accountability requirements as being too extensive and thereby restricting the use of federal aid to an undesirable degree, thereby reducing its effectiveness. These analysts also tend to criticize the current flexibility authorities as being too limited to adequately address this problem.

Second, there is widespread general interest in ways to increase accountability in elementary and secondary school systems throughout the nation, and debate over accountability mechanisms in the states and LEAs is being extended to federal programs as well. The focus of this concern about increasing accountability has been primarily, although not solely, on pupil achievement outcomes. This theme has incorporated concerns about the adequacy, potential effectiveness, and implementation timing thus far of the existing outcome accountability requirements of the largest federal program (ESEA Title I); as well as criticisms of a primary reliance on outcome accountability requirements in optional grant consolidation/performance agreement (partnership) proposals.

Criticisms of Current Accountability Requirements and Flexibility Authorities

Advocates of increased state and local flexibility in the use of federal K-12 education aid funds — especially supporters of the two optional performance agreement/partnership and grant consolidation proposals discussed above — have argued that the current multifaceted mixture of accountability requirements is unnecessarily burdensome for states, LEAs, and schools, reduces their ability to design and implement effective instructional approaches in important ways, and hampers pursuit of what they consider to be the most important goal of the ESEA — increasing the academic achievement of participating pupils. Thus, their proposals would have exempted participating states and LEAs from most of the accountability requirements which are not directly related to outcomes, while adding new outcome accountability requirements for states overall. At the same time, several analysts defend the current range of accountability requirements as embodying important national priorities, and are concerned that even the current flexibility authorities have

insufficient accountability provisions and have been used largely for purposes that have not been proven to increase program effectiveness.

Current aid programs have generally been focused on specific student population groups with special needs (e.g., educationally disadvantaged pupils or pupils with limited English language proficiency), priority subject areas (e.g., mathematics or science), or specific educational concepts or techniques (e.g., charter schools). These forms of federal aid were adopted because of a perception that many states and LEAs were unable or unwilling to adequately address these national needs or priorities. While such “categorical” program structures assure that aid is directed to the priority population or purpose, critics assert that the targeted programs may have unintended consequences which reduce their effectiveness. Specific complaints are often focused on the following types of requirements: (a) prohibitions against commingling of funds under different federal programs with each other or with state and local revenues; (b) restrictions on the use of resources purchased with federal program funds for activities other than those conducted under that program; (c) requirements that aid be targeted on certain types of pupils or schools; (d) eligibility thresholds for special forms of flexibility (e.g., ESEA Title I schoolwide programs); and (e) limitations on instructional approaches under programs such as the Bilingual Education Act (ESEA Title VII).

From a local perspective, these requirements may sometimes seem to be unnecessarily inflexible, especially in relatively low enrollment LEAs which may receive small grants under each of a variety of federal programs. While a categorical approach directs federal aid at high need pupil groups under several of the largest ED programs, it *may* have undesirable effects, such as: fragmentation of services to children, with challenges for coordinating special program instruction with regular instruction; inefficient use of resources, that may remain unused when not required by special needs pupils; treatment of partial needs when a more coherent focus on the whole child and her/his entire instructional program might be more effective; or instruction of pupils in separate settings, when this might not be the most effective instructional technique. The traditional federal categorical approach has been criticized as leading to fragmented instruction, and a focus in implementation more on targeting resources and inputs than on improving achievement and other outcomes for pupils. Difficulties may also arise from efforts to implement federal programs in states and LEAs with widely varying educational policies and demographic conditions.

Efforts to provide greater flexibility with less targeting may allow states and LEAs to use federal aid in ways they deem to be most productive, and with minimum regulatory or administrative staff “overhead.” Such an approach might be consistent with the small (7%) average federal share of K-12 education revenues, and the argument that most educational innovations in recent years have been generated through state and local initiatives, not targeted federal programs.

At the same time, increased flexibility may dilute the impact of federal funding on educational needs of national concern, reducing assurances that aid will be used to meet national objectives or goals. Restrictions on the use of instructional resources to the pupils eligible to be served, as well as requirements to target aid on pupils and schools with the greatest incidence of poverty, are intended to focus limited federal

funds on those with the greatest needs. If fiscal accountability requirements may be waived, federal grants may not result in a net increase in educational resources in some states or LEAs.

Criticisms of Current Flexibility Authorities. There have been three basic themes of criticism of the current flexibility authorities: (1) they are too limited to be of major value to states and LEAs; (2) they are used infrequently, and largely for purposes which are not clearly linked to educational improvement; and (3) the additional accountability requirements associated with them are ambiguous and little enforced.

Limitations of Current Flexibility Authorities. The current flexibility authorities are restricted in important respects. While broad in terms of the potential uses of funds and federal programs covered, the ESEA Title I schoolwide program authority is limited to the school level, and only relatively high poverty schools may generally qualify. The case-by-case waiver authorities are limited by the necessity of submitting individual requests to the U.S. Secretary of Education. The Ed-Flex authority applies only to the state-administered formula grant programs, not to discretionary or competitive grant programs. Most importantly, there are several types of requirements which cannot be waived under any of these authorities.

The authors of a recent General Accounting Office (GAO) report (*Elementary and Secondary Education: Ed-Flex States Vary in Implementation of Waiver Process*. HEHS-99-17) found that the current flexibility authorities do not address the main regulatory burdens of states and LEAs, which are associated with the IDEA, the Americans with Disabilities Act, child nutrition program administration, and environmental requirements (e.g., underground storage tanks and asbestos removal). SEA staff in some states think Ed-Flex is of limited value, because of the relatively few programs and requirements that may be waived. In contrast, SEA staff in other states think its usefulness extends beyond specific use of the authority, through creating a “climate that encourages innovation and flexibility.”

Purposes for Which Flexibility Has Been Used. While proponents of increased flexibility in federal education programs often argue that waivers can remove federal regulatory barriers to local educational reform and initiative, the waivers have to date been used for relatively few purposes, some of which are not clearly related to innovation or reform. The current flexibility authorities have been most often used thus far to waive the following requirements: (1) the minimum low-income pupil percentage threshold for ESEA Title I schoolwide program eligibility; (2) within-LEA targeting of Title I funds on schools with the highest number or percentage of pupils from low-income families; (3) deadlines for adoption and implementation of standards and assessments under ESEA Title I; and (4) the minimum percentage of funds under the Eisenhower Professional Development Program (ESEA Title II) which must be devoted to the subjects of mathematics and science.

While schoolwide programs offer a great deal of flexibility to use funds under not only Title I but also most other federal programs in ways that might not ordinarily be allowed, it has been questioned whether schools with relatively low percentages of their pupils from low-income families should be granted this authority. If schools with

relatively low poverty rates receive permission to operate schoolwide programs, the scope of these programs might be limited (since the size of a school's Title I grant is based on its number of children from low-income families), and it may be very difficult for such a modest program to focus significant resources on the (presumably smaller) population of low-achieving pupils in the school. Further, no systematic evidence is available that schoolwide programs are more effective than more traditional Title I programs in improving the education of disadvantaged pupils.

The use of waivers to maintain or expand the number of schools participating in Title I would tend to disperse Title I funds among an increased number of relatively low-poverty schools, reducing the concentration of funds on high poverty schools. As noted above, Ed-Flex places restrictions on, but does not prohibit, waivers regarding ESEA Title I school selection. Finally, the use of waivers to delay meeting deadlines for implementing ESEA Title I standard and assessment requirements arguably undercuts the most substantial existing outcome accountability requirement; and waiving the Eisenhower program minimum percentage provision would lessen support for educational improvement in the national priority subject areas of mathematics and science.

Limited Accountability Under Current Flexibility Authorities. A potential area of weakness that has been noted in the basic concept of educational flexibility is whether the accompanying new forms of accountability — based on pupil outcomes — will be an adequate substitute for more traditional forms of regulation, or will provide evidence of the effectiveness of waivers that have been granted. Systematic data are not yet available on the trends in pupil achievement in LEAs or schools that have been granted federal program waivers or schoolwide program status under current authorities.

When available, these data will be based on the individual standards, assessments, and overall accountability systems used in the various states. Therefore, their nature and significance are likely to vary widely, depending on the stage of evolution of each state's accountability system and how challenging are the state's pupil performance standards. There are also questions of how much improvement, or what other goals, would be sufficient to justify the waiver of different specific requirements. A recent GAO study (see above) found that the current Ed-Flex states differ substantially in the clarity and specificity of their outcome goals related to the granting of waivers; five of the original 12 Ed-Flex states had set no specific objectives at all for LEAs or schools being granted waivers, and only one of the states had established outcome objectives that were specifically linked to the LEAs, schools, and pupils affected by the waivers. The GAO study further concluded that ED oversight of Ed-Flex implementation by the states was very limited, involving mostly just the collection of annual reports from the states with highly varying degrees of detail in the information they provide. An additional issue is that any assumed linkages between waivers granted and changes in the level of pupil achievement are likely to be questionable.

In response to the criticisms of current flexibility authorities outlined above, supporters of these authorities point to the conclusions regarding the impact of Ed-Flex stated in a 1998 report from ED (*Goals 2000: Reforming Education to Improve Student Achievement*, Appendix B. April 30, 1998). According to this report, Ed-

Flex authority has supported standards-based reform in the affected states in three major ways:

- Ed-Flex “facilitates the coordination of programs and strengthens the planning process,” by encouraging LEAs and schools to develop instructional programs without regard to the perceived constraints of many standard federal or state program requirements.
- Ed-Flex “provides the opportunity for States to streamline the administration of programs” by reducing paperwork deemed unessential to meeting basic purposes of federal programs.
- Ed-Flex “supports the use of resources in a way that can, together with the implementation of standards-based approaches, lead to increased student achievement and reduction in the gap in achievement between different populations” by shifting oversight focus away from inputs or procedures and toward outcomes.

However, given the very limited amount of data showing improved pupil achievement outcomes in states, LEAs, or schools to which current forms of flexibility have been granted, and particularly the early stage of evolution of Ed-Flex implementation, these conclusions by ED should presumably be considered to be tentative.

Efforts to Increase Pupil Outcome Accountability Requirements

While some forms of accountability have long been implemented in states and LEAs, there has recently been increasing emphasis on accountability mechanisms in general, and outcome accountability policies in particular. As almost all states have adopted curriculum content and pupil performance standards in core subject areas, and have adopted or are adopting assessments linked to these standards, many of them are establishing policies which respond to school and LEA performance on these assessments out of continuing concern about increasingly visible inadequate performance by at least some schools and LEAs.

Large numbers of states and LEAs are implementing such policies as: (a) financial and other rewards to especially successful LEAs, schools, and teachers; (b) identification of schools and LEAs which fail to meet performance expectations, provision of technical assistance to these, and ultimately the application of sanctions to schools and LEAs which fail to improve significantly after being identified; (c) publication of “report cards” with information on the characteristics and performance of schools, LEAs, and states; (d) “disaggregation” of performance data — i.e., reporting of results not only for pupils overall but also separately for major demographic groups — for schools and LEAs, often with goals of improving performance for each pupil group and reducing achievement gaps among groups; and (e) provision of options to attend different schools (public or occasionally private) to pupils attending schools where performance is inadequate. In some states and LEAs, these policies are integrated into a comprehensive “accountability system,” which may also include the accountability requirements under the current ESEA Title I statute.

Criticisms of Current Title I Outcome Accountability Provisions.

Accountability is also a major focus of debate regarding the ESEA because of concerns regarding the adequacy and implementation status of current pupil outcome requirements under ESEA Title I. Some analysts have argued that the current Title I outcome accountability requirements should be modified to: (a) apply to states overall, in addition to LEAs and schools; (b) include more substantial authority for financial rewards to especially effective schools, LEAs, and states; (c) give states fewer options to delay meeting implementation deadlines; (d) require state standards of “Adequate Yearly Progress” for participating pupils, schools, and LEAs to be more specific, detailed, and challenging; (e) require states and LEAs to take at least one of a limited range of corrective actions with respect to schools and LEAs which fail to meet performance standards, and to offer public (or sometimes also private) school choice options to pupils attending all such schools; (f) assess the reading/language arts achievement of pupils in English if they have attended United States schools for at least 3 years; (g) require states to establish standards and assessments in science, as well as mathematics and reading/language arts; and (h) integrate Title I and state-initiated accountability requirements and standards into a single system.

Can Accountability for Federal Aid Be Most Appropriately and Effectively Established Through a Primary Reliance on Outcomes or Through Multiple Forms of Accountability? Finally, much of the recent debate over the federal role in K-12 education has been centered on the question of whether accountability for federal K-12 education programs should be established primarily on the basis of pupil achievement and other outcomes, or whether it should continue to be based on a broad mixture of outcome (for programs such as ESEA Title I) and numerous other forms of accountability.

One argument in favor of basing accountability for ESEA grants primarily on pupil outcomes is that the current mixture of accountability requirements is unnecessarily burdensome for states, LEAs, and schools, reduces their flexibility in important ways, and detracts focus from what many consider to be the most important goal of these programs — increasing the academic achievement of participating pupils. A focus primarily on outcomes, it is argued, including a specific focus on outcomes for disadvantaged pupils, would clarify the intent of federal programs to improve pupils’ academic performance, while maximizing state and local flexibility in choosing the most effective means of reaching that goal. While the standards, assessments, and goals of this outcome accountability system would be determined by the states themselves, this is also true of existing and proposed outcome accountability provisions of ESEA Title I, and may be the only feasible option in our system of state and local primacy in educational policy, governance, and especially curricula.

Although it is not fully clear how some of them might be interpreted, the outcome accountability requirements in the performance partnership/agreement proposals were relatively detailed, were to be based on pupil performance standards which were consistent throughout the life of the performance agreement, and were to include increased performance by all pupil groups while reducing achievement gaps among pupils of different groups. Thus, the outcome accountability requirements considered not only aggregate achievement trends, but also the relative performance of many groups of disadvantaged pupils who have been the focus of ESEA programs.

In addition, as noted earlier, states or LEAs which included Title I, Part A in their performance agreements or partnerships would have been required to continue meeting the outcome accountability requirements of that program.

While opponents of the performance agreement/partnership proposals might agree that increasing pupil achievement outcomes is the most important single goal of the ESEA, there are at least three major criticisms of a *primary* emphasis on outcome accountability. First, a number of the ESEA requirements other than those related to outcomes, if deemed to be burdensome by grantees, may be waived under current authorities.

Second, opponents of the performance agreement/partnership proposals have argued that aspects of accountability *other than* those related to outcomes — such as the targeting of aid on high-need pupils, schools, and LEAs — are very important federal accountability priorities in themselves. A focus primarily on outcomes would eliminate types of accountability requirements currently considered by many to be basic elements of the federal role in K-12 education. Some of the performance partnership/agreement proposals of recent years would remove virtually all federal direction over the use of federal funds under the affected programs, including most ESEA requirements to target funds on high need LEAs or schools. However, such flexibility would be substantially constrained under the provisions embodied in the House and Senate versions of H.R. 1.

Third, opponents of the performance agreement/partnership proposals have argued that there are weaknesses in specific aspects of the outcome accountability provisions of these proposals: (a) while rapidly evolving, the systems of standards and assessments in many states are insufficiently developed to serve as the primary basis of accountability for federal aid programs; (b) standards, assessments, and performance goals would be selected by the states, with no guarantee that performance goals will be substantial or challenging — and while this is also true of the current ESEA Title I outcome accountability requirements, those requirements must shoulder a lesser burden of responsibility because they are used in tandem with many other types of accountability requirements; (c) the *new* outcome accountability provisions under these proposals would require only that the performance of all pupils would increase, and achievement gaps among major demographic groups of pupils would decrease, *for the state as a whole*, not for individual LEAs or schools; (d) the sanctions for states which fail to meet their performance goals are very limited; (e) the implications of some basic elements of the outcome accountability requirements are ambiguous — e.g., the provision that they must “consider” changes in the performance of each LEA and school; and (f) the performance agreement proposal provides for a formal review only after 5 years.

For Additional Reading

- CRS Report RL30393, *Academic Achievement for All Act (Straight A's Act) — Background and Analysis*, by Wayne Riddle.
- CRS Report RL31035, *Adequate Yearly Progress Under the ESEA: Provisions, Issues, and Options Regarding House and Senate Versions of H.R. 1*, by Wayne Riddle.
- CRS Report RL30742, *Assessment Requirements Under ESEA Title I: Implementation Status and Issues*, by Wayne Riddle.
- CRS Report RL30621, *Aspects of Accountability in ESEA Title I and Other Education Proposals in the 106th Congress*, by Wayne C. Riddle.
- CRS Report RL30942, *Educational Testing: Bush Administration Proposals and Congressional Response*, by Wayne Riddle.
- CRS Issue Brief IB10066, *Elementary and Secondary Education: Reconsideration of the Federal Role by the 107th Congress*, by Wayne C. Riddle and James Stedman.
- CRS Report RL30921, *ESEA Reauthorization Proposals: Comparison of Major Features of the House and Senate Versions of H.R. 1*, by Wayne Riddle, et al.
- CRS Report 98-676, *Federal Elementary and Secondary Education Programs: Ed-Flex and Other Forms of Flexibility*, by Wayne C. Riddle.
- General Accounting Office. *Block Grants: Characteristics, Experience, and Lessons Learned*. February 1995. GAO/HEHS-95-74.
- Ruskus, Joan, et al. *How Chapter 2 Operates at the Federal, State, and Local Levels*. Prepared for the U.S. Department of Education. 1994.
- U.S. Department of Education. Planning and Evaluation Service. *Study of Educational Resources and Federal Funding: Final Report*. August 2000.