
ESEA Flexibility

Guidance for Renewal Process

November 13, 2014

INTRODUCTION

In September 2011, the U.S. Department of Education (Department) offered each State educational agency (SEA) the opportunity to request flexibility, on behalf of itself and its local educational agencies (LEAs) and schools, to help them move forward with State and local reforms designed to improve student learning and increase the quality of instruction for all students. This voluntary opportunity provides educators and State and local leaders with flexibility regarding specific requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), in exchange for rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction (ESEA flexibility). States have utilized this flexibility to put in place innovative, locally-tailored strategies to address their most pressing education challenges. The Department is now extending the option of this flexibility for all States continuing to implement their plans and committed to continuously reviewing and improving their work.

Through its core principles, ESEA flexibility builds on and supports significant State and local efforts to improve educational outcomes for all students. Each of the core principles is intended to complement each other so that the quality of teaching and learning is enhanced.

- Under Principle 1, each SEA is raising expectations so that all students graduate from high school ready for college and a career, by implementing State-developed college- and career-ready standards. In addition, each SEA has committed to implement high-quality assessments aligned to those standards to help educators improve instructional practice, to provide all students with the opportunity to demonstrate what they know and are able to do, and provide parents with useful information about student performance.
- Under Principle 2, each SEA is implementing differentiated accountability systems for schools and districts that incorporate a variety of measures, including rigorous performance and graduation rate targets, to identify under-performing schools and subgroups and more effectively target meaningful interventions based on need, and to identify high-performing or rapidly improving schools. This strategic approach creates purposeful differentiation, allowing States to take dramatic action in the lowest-performing schools, provide greater autonomy to high-performing schools, and target interventions and resources at a subgroup level in schools that may be performing well overall but in which a single subgroup may be lagging.
- Under Principle 3, each SEA has committed to implement teacher and principal evaluation and support systems based on multiple measures, including student growth as a significant factor, and other measures of professional practice such as observations based on rigorous teacher performance standards, teacher portfolios, and student and parent surveys, that meaningfully differentiate performance, and that evaluate teachers and principals on a regular basis. These systems are designed to provide teachers and leaders with clear, timely, and useful feedback, as well as targeted supports, to continuously improve instructional and leadership practices so that every student has access to a high-quality education.
- Under Principle 4, each SEA is working to reduce duplication and unnecessary burden.

The Department invited SEAs to request this flexibility pursuant to section 9401 of the ESEA, which allows the Secretary to waive, with certain exceptions, statutory or regulatory requirements for an SEA that receives funds under a program authorized by the ESEA and requests a waiver. Approvals of SEA requests have occurred in the following phases:

- Window 1, for which SEAs submitted requests in November 2011;
- Window 2, for which SEAs submitted requests in February 2012;
- Window 3, for which SEAs submitted requests in September 2012;
- Window 4, for which SEAs submitted requests in spring 2013;
- Window 5, for which SEAs submitted requests in spring 2014.

The Department is now inviting all SEAs with requests that will expire at the end of the 2014-2015 school year to request a three-year renewal of ESEA flexibility, which would extend through the end of the 2017–2018 school year. In addition, any Window 1 or 2 SEA that is fully meeting its commitments to the timelines and principles of ESEA flexibility is eligible to request a four-year renewal through the 2018–2019 school year. If Congress reauthorizes the ESEA during the period of the waivers, the Department will provide guidance on the transition to the new law.

The Department will review each SEA request for renewal of ESEA flexibility against the principles of ESEA flexibility, as well as the specific information requested in this document. As in the initial review process, this renewal process will ensure that each request approved by the Department is consistent with the principles of ESEA flexibility; is likely to close achievement gaps, improve student academic achievement, and increase the quality of instruction; and is both educationally and technically sound.

The Department has determined that this document is a “significant guidance document” under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf.

The purpose of this guidance is to invite each SEA with ESEA flexibility to request a three-year renewal of that flexibility and to provide assistance to each SEA in preparing its request for renewal. Therefore, this guidance provides considerable detail and information on how an SEA should prepare its renewal request. However, this guidance does not impose any requirements beyond those required under applicable law and regulations. It does not create or confer any rights for or on any person.

If you are interested in commenting on this guidance, or if you have further questions that are not answered here, please e-mail ESEAFlexibility@ed.gov using the subject “ESEA Flexibility Renewal Guidance” or write to us at the following address:

U.S. Department of Education
Office of Elementary and Secondary Education
Office of State Support
400 Maryland Avenue, SW
Washington, DC 20202

GENERAL INSTRUCTIONS

An SEA seeking renewal of ESEA flexibility must submit an updated ESEA flexibility request describing how it will continue to meet the ESEA flexibility principles, so that the Secretary can determine, consistent with ESEA section 9401(d), that the waivers have been effective in enabling the SEA to carry out the activities for which the waivers were requested, have contributed to improved student achievement, and their extension is in the public interest. As part of the SEA's updated ESEA flexibility request, the SEA must include in redline any changes made to its currently approved flexibility request and all narrative responses to the items described below (Sections I – II of this document). In addition, the SEA must submit a completed ESEA flexibility renewal form indicating where text in the redlined ESEA flexibility request is responsive to renewal requirements.

The request for renewal of ESEA flexibility also provides an opportunity for an SEA to amend its approved request as part of a continuous improvement process to address challenges and build on successes from current implementation. In addition, an SEA is encouraged to align its ESEA flexibility implementation efforts with other improvement efforts within the State to ensure consistency and coherence across its statewide systems. Therefore, an SEA may choose, but is not required, to amend its currently approved ESEA flexibility request to make any additional changes it deems necessary to improve implementation going forward and to reflect implementation activities that have already occurred (Section III). An SEA requesting to amend its currently approved request must complete the table contained in Section III on the ESEA flexibility renewal form.

In order to receive renewal of ESEA flexibility, each SEA must resolve outstanding issues relating to implementation of ESEA flexibility. These issues include outstanding findings of non-compliance, conditions placed on approval, high-risk status, next steps identified in ESEA flexibility monitoring reports, and specific issues identified during approval of the SEAs request for extension, and may include findings in related program monitoring reports or noncompliance with federal civil rights laws.

If an SEA's request for ESEA flexibility is not approved, the SEA and its LEAs will be required to resume complying with all ESEA requirements by the beginning of the 2015–2016 school year, including making adequate yearly progress (AYP) determinations; identifying schools and LEAs for improvement, corrective action, or restructuring, as applicable; and taking required improvement actions, as required by Title I of the ESEA, including offering and paying for supplemental educational services and transportation for public school choice.

Preparing the Request

To prepare a high-quality request for renewal of ESEA flexibility, an SEA must continue to adhere to the document titled [ESEA Flexibility](#), which contains the principles of ESEA flexibility. Additionally, the documents titled [ESEA Flexibility Frequently Asked Questions \(FAQ\)](#) and [FAQ Addendum](#) provide guidance that applies to all SEAs requesting renewal of ESEA flexibility. The Department intends to release additional FAQs specific to the renewal process in the coming weeks. In order to receive renewal, an SEA must meet all elements of the principles of ESEA flexibility.

As used in this guidance, the following terms have the meanings set forth in the document titled *ESEA Flexibility*: (1) college- and career-ready standards, (2) focus school, (3) high-quality assessment, (4) priority school, (5) student growth, and (6) turnaround principles.

In requesting renewal of ESEA flexibility, each SEA must update its currently approved ESEA flexibility request by providing in redline each of the following (as well as relevant attachments, if necessary):

- A description of how the SEA has met the consultation requirements with respect to its renewal request and will continue to consult with appropriate stakeholders over the period of the waivers consistent with Section I.
- A narrative response updating the SEA's currently approved ESEA flexibility request to address each of the items under Section II and describe continuous improvement efforts across all principles.
- Any other amendments beyond the requested items and a rationale supporting each of those amendments consistent with Section III, if applicable.

In addition, an SEA must remove the cover sheet, waivers, and assurances pages in its currently approved ESEA flexibility request and replace them with the completed cover sheet, waivers, and assurances pages from the ESEA flexibility renewal form.

Because the Department intends to post the final documents submitted by the SEA once the renewal request has been approved, an SEA must ensure that its request does not include personally identifiable information.

Process for Submitting a Renewal Request

In order to be considered for renewal of ESEA flexibility, an SEA must submit its redlined flexibility request to the Department, together with a completed copy of the ESEA flexibility renewal form. The renewal form and other pertinent documents are available on the Department's website at: <http://www.ed.gov/esea/flexibility/>.

Electronic Submission: The Department strongly prefers to receive an SEA's request for renewal of ESEA flexibility electronically. The SEA should submit its request to the following address: ESEAflexibility@ed.gov.

Paper Submission: As an alternative, an SEA may submit its request for renewal of ESEA flexibility and two copies to the following address:

Dr. Monique M. Chism, Director
Office of State Support
U.S. Department of Education
400 Maryland Avenue, SW
Room 3W224
Washington, DC 20202-6132

Due to potential delays in processing mail sent through the U.S. Postal Service, an SEA is encouraged to use alternate carriers for paper submissions.

REQUEST SUBMISSION DEADLINE

An SEA seeking renewal of ESEA flexibility must submit its request no later than March 31, 2015. A Window 1 or 2 SEA fully meeting its commitments to the timelines and principles of ESEA flexibility will be invited to submit a request by January 30, 2015 to participate in an intensive, expedited review process. An SEA invited to participate in this process may request and be considered for a four-year renewal. The process will be consistent in terms of rigor with the review process for all States, but will take place on a condensed timeline and will include a meeting between Department staff and SEA officials in Washington, DC. This review process reflects feedback the Department has received from several States and is part of the Department's efforts to continuously improve the way it serves and supports SEAs so that SEAs, in turn, can continuously improve the way they serve and support their students.

TECHNICAL ASSISTANCE

The Department will assist an SEA in preparing its renewal request through webinars, email, and telephone communications with the SEA's contact. Please visit the Department's website at: <http://www.ed.gov/esea/flexibility/> for relevant technical assistance materials and feel free to email or call your SEA's contact within the Department with any questions you may have.

EVALUATION

Given the range of State and local educational strategies being implemented under ESEA flexibility, the Department is interested in working with SEAs to evaluate and learn from different State and local approaches, including providing funding for such evaluations. The purpose of these evaluations is to increase understanding of how different State approaches and strategies (including differentiated accountability systems and teacher and principal evaluation and support systems) contribute to improving educational outcomes for all students. The Department will share additional information on the process by which States can propose evaluations of innovative approaches to improving student achievement and increasing the quality of instruction.

GUIDANCE

SECTION I: WAIVERS, ASSURANCES, AND CONSULTATION

An SEA must renew its request for each of the waivers offered under ESEA flexibility by checking the box next to each waiver on the ESEA flexibility renewal form. An SEA may also request, or opt to no longer request, the three optional waivers offered as part of the original ESEA flexibility process (21st Century Community Learning Centers, making AYP determinations, within-district Title I allocations) and either or both new optional waivers (use of 1003(a) funds in other Title I schools and middle school mathematics assessment flexibility). In requesting renewal, an SEA must also, by checking the box next to each assurance, renew its assurances and provide additional assurances relating to implementation of teacher and principal evaluation and support systems.

An SEA must remove the cover sheet, waivers, and assurances pages from its currently approved request and replace these pages with completed copies of the cover sheet, waivers, and assurances pages from the ESEA flexibility renewal form.

In addition, an SEA seeking renewal must provide a description of how it meaningfully solicited input on the implementation of ESEA flexibility, and the changes that it made to its currently approved flexibility request, from LEAs, teachers and their representatives, administrators, students, parents, community-based organizations, civil rights organizations, organizations representing students with disabilities, organizations representing English Learners, business organizations, institutions of higher education (IHEs), and Indian tribes.

SECTION II: CONTINUED COMMITMENT TO ESEA FLEXIBILITY PRINCIPLES

An SEA seeking renewal of ESEA flexibility must demonstrate a continued commitment to implementing the ESEA flexibility principles. Specifically, an SEA must address each of the principles as described below through at least the end of the 2017–2018 school year (an SEA that is eligible for and requests a four-year renewal must address each of the principles as described below through at least the end of the 2018–2019 school year).

Principle 1: College- and Career-Ready Expectations for All Students

Each SEA must update its currently approved ESEA flexibility request to describe how it will continue to ensure all students graduate from high school ready for college and a career, through implementation of college- and career-ready standards and high-quality aligned assessments (general, alternate, and English language proficiency), including how the SEA will continue to support all students, including English Learners, students with disabilities, low-achieving students, and economically disadvantaged students, and teachers of those students.

Principle 2: State-Developed Systems of Differentiated Recognition, Accountability, and Support

Each SEA must provide narrative responses for each of the items enumerated below. In providing these narrative responses, each SEA must describe its process for continuous improvement of its

systems and processes supporting implementation of its system of differentiated recognition, accountability, and support. In describing its process for continuous improvement, an SEA should consider how it will use systematic strategies to analyze data and revise approaches to address implementation challenges in order to ensure that it and its LEAs are meeting the needs of all students.

2.A. Develop and Implement a State-Based System of Differentiated Recognition, Accountability, and Support:

To receive ESEA flexibility, an SEA had to implement a differentiated recognition, accountability, and support system that was likely to improve student achievement and school performance, close achievement gaps, and increase the quality of instruction for all students. This system must be based on student achievement, graduation rates, and school performance and progress over time, including for all students and all subgroups of students identified in ESEA section 1111(b)(2)(C)(v)(II). As part of the SEA's process of ensuring that schools are accountable for the performance of all subgroups of students, in its renewal request, each SEA must demonstrate that a school may not receive the highest rating in the SEA's differentiated recognition, accountability, and support system if there are significant achievement or graduation rate gaps across subgroups that are not closing in the school.

2.D. Priority Schools: To receive ESEA flexibility, an SEA had to commit to ensuring its LEAs implement interventions aligned to all of the turnaround principles in all of its priority schools (no later than the 2014–2015 school year for Windows 1 and 2 States and no later than the 2015–2016 school year for Windows 3 and 4 States). Therefore, each SEA must update its list of priority schools to ensure that interventions are being implemented in the lowest-performing schools. In its request for renewal of ESEA flexibility, each SEA must:

- a) Submit either (i) its updated list of priority schools based on the most recent available data, for implementation beginning in the 2015–2016 school year, or (ii) an assurance that it will provide an updated list of priority schools based on school year 2014–2015 data no later than January 31, 2016, for implementation beginning no later than the 2016–2017 school year;
- b) Provide its timeline for implementation of interventions aligned with all of the turnaround principles in all priority schools; and
- c) Describe its process for identifying any schools that, after implementing interventions for three school years, have not made sufficient progress to exit priority status and describe how the SEA will ensure increased rigor of interventions and supports in these schools by the start of the 2015–2016 school year.

2.E. Focus Schools: To receive ESEA flexibility, an SEA had to commit to ensuring that its LEAs would implement interventions and supports in each focus school that are targeted to the school's reason for identification. In its renewal request, each SEA must:

- a) Submit either (i) its updated list of focus schools based on the most recent available data, for implementation beginning in the 2015–2016 school year, or (ii) an assurance that it will provide an updated list of focus schools based on school year 2014–2015 data no later than January 31, 2016, for implementation beginning no later than the 2016–2017 school year;
- b) Provide its process, including a timeline, for ensuring that its LEAs implement interventions targeted to focus school's reason for identification;

- c) Describe its process for identifying any schools that have not made sufficient progress to exit focus status and describe how the SEA will ensure increased rigor of interventions and supports in these schools by the start of the 2015–2016 school year.

2.F. Other Title I Schools: Each SEA approved for ESEA flexibility committed to provide incentives and supports to ensure continuous improvement in other Title I schools that, based on the SEA’s annual measurable objectives (AMOs) and other measures, were not making progress in improving student achievement and narrowing achievement gaps. In addition, in a guidance letter issued to SEAs on November 26, 2012, the Department clarified that each SEA approved for ESEA flexibility must incorporate, to a significant degree, the four-year adjusted cohort graduation rate in its State-developed system of differentiated recognition, accountability, and support, including using graduation rate targets for all students and for all subgroups to drive incentives, interventions, and supports in other Title I schools. In its renewal request, each SEA must update its plan for providing incentives and supports to other Title I schools to include a clear and rigorous process for ensuring that LEAs provide interventions and supports for low-achieving students in those schools when one or more subgroups miss either AMOs or graduation rate targets or both over a number of years.

2.G. Build SEA, LEA, and School Capacity to Improve Student Outcomes: Each SEA approved for ESEA flexibility committed to hold LEAs accountable for improving school and student performance, particularly in priority and focus schools. Each SEA seeking renewal of ESEA flexibility must describe its statewide strategy to support and monitor LEA implementation of the State’s system of differentiated recognition, accountability, and support. This description must include the SEA’s process for holding LEAs accountable for improving school and student performance.

Principle 3: Supporting Effective Instruction and Leadership

Each SEA approved for ESEA flexibility committed to implementing teacher and principal evaluation and support systems that use multiple measures of performance, including student growth as a significant factor. These systems must include other factors in addition to student growth, such as measures of professional practice (*e.g.*, observations based on rigorous teacher performance standards, teacher portfolios, and student and parent surveys). These systems must be used to guide professional development for teachers, as well as identify excellent teachers. An SEA that is on track for full implementation of teacher and principal evaluation and support systems need only check assurance 15.a. on the ESEA flexibility renewal form and does not need to provide a narrative response to this item. An SEA that is requesting a one-year delay in incorporating student growth based on State assessments into educator ratings for teachers and principals of tested grades and subjects because of the transition to new assessments in school year 2014–2015 need only check assurance 15.b.i and 15.b.ii and also does not need to provide a narrative response to this item.

An SEA requesting other modifications to its teacher and principal evaluation and support system guidelines or implementation timelines that require additional flexibility that goes beyond the flexibility offered in the document titled *ESEA Flexibility* as well as the documents related to the additional flexibility offered by the Assistant Secretary in a letter dated August 2, 2013 ([Teacher and Principal Evaluation and Support Systems Flexibility](#)), must provide a narrative response to this item detailing:

- a) The progress made to date in ensuring that each LEA is on track to implement a high-quality teacher and principal evaluation and support system designed to support educators and improve instruction;
- b) The proposed change(s) and the SEA's rationale for each change; and
- c) The steps the SEA will take to ensure continuous improvement of evaluation and support systems that result in instructional improvement and increased student learning.

SECTION III: ADDITIONAL AMENDMENTS (OPTIONAL)

As part of the process for continuous improvement, the Department expects each SEA approved for ESEA flexibility to continuously evaluate the implementation of its approved plans and processes, analyze data, and revise strategies to build on successes and address challenges. The Department therefore encourages each SEA to consider if changes are necessary to implement its currently approved flexibility request more efficiently and/or effectively, or to further align its implementation with other improvement efforts within the SEA. If an SEA wishes to make any additional amendments to its currently approved flexibility request to clarify or revise how the SEA and its LEAs will close achievement gaps, improve student achievement, and increase the quality of instruction, the SEA must include those amendments in its redlined request and identify on the renewal request form the page numbers on which amendments have been made. An SEA need not make any amendments beyond those discussed in Sections I and II above in order to receive renewal of ESEA flexibility. For any additional amendments the SEA makes to its currently approved flexibility request, the SEA must provide a rationale for the proposed change(s), either in the text of the ESEA flexibility request or on the ESEA flexibility renewal form.

In considering whether or not to make additional amendments to its approved ESEA flexibility request, an SEA should keep in mind that the Department will not approve any amendment that conflicts with the ESEA flexibility principles.