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PAGE CAROL

Regulatory Reinvention at the U.S. Department of Education

National Performance Review II

Regulatory Reinvention at the U.S. Department of Education

Agenda

March 2, 1995

I. Context for reinventing the regulatory process at ED

Overview

Examples of why reform of the regulatory process and federal regulations is absolutely necessary

Coordinating federal agencies—a proposal

II. Initial steps for regulatory reform and reinvention

Set out concrete principles for when and how to regulate

Making it real—put the principles into operation

III. New themes for ED's regulatory reinvention

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Flexibility

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I. INTRODUCTION

The mission of the Department of Education (ED) is "to ensure equal access to education and to promote educational excellence throughout the nation." To achieve our mission and serve successfully our customers, namely, learners of all ages, ED is committed to applying reinvention principles at every step of the legislative, regulatory, implementation, communication, and compliance processes. The Department's October 1994 streamlining report to OMB says it best, in addressing K-12 education:

The Department has begun to move away from a role characterized by a narrow compliance mentality to one of stimulating change through new partnerships with States and localities. The challenge is to break out of the old system of categorical, top-down programs and to help States and local educational agencies develop coherent, comprehensive strategies for improvement.

Reaffirming the importance of our customers is also a theme emphasized in ED's December 1994 strategic plan:

The most critical task now facing us is to implement our... programs in a way that supports improvements in teaching and learning and reduces regulatory burdens to customers.

II. CRITICAL COMPONENTS OF REGULATORY REINVENTION

Achieving comprehensive and long-lasting regulatory reinvention in the Department of Education rests on consideration of several critical components. These include

1. ED's Regulatory Tensions and Challenges

Regulatory principles are a necessary condition for regulatory reinvention---but they are not sufficient. ED must have and show the commitment and will to apply our principles in the face of complex and often contradictory forces.

Some regulatory improvements make sense to everybody: clearer language, reduced burden, less paperwork, no outmoded procedures, coordinated requirements across comparable programs, and no outmoded procedures. Reinvention on this level is a matter of prioritization, resources, and leadership, not controversy. ED has an excellent start on this kind of reinvention and is committed to accelerating our regulatory reviews and results.

The next level of reinvention extends beyond cleaning out the regulatory attic, however. This is where equally significant, deeply-held values often clash head-on. Reinvention at this level requires tough decisions to honor one value over another, or extraordinarily creative approaches that reconcile conflicts. These ED challenges and tensions, highlighted in TAB A, include such conflicts as those inherent in Congressional and press oversight v. efficient use of resources, flexibility v. inertia, equity v. burden, and trust v. verification.

2. Education Customers' Views of Regulations

The Department's goals and strategies for (re)shaping the nature and structure of our programs should reflect the views and perspectives of our customers. Although additional steps need to be taken, ED's recent successes in reinventing its regulations give strong evidence of this commitment to outreach.

At the same time, the Department's customers often feel as if they are overly burdened by ED regulations. TAB B illustrates this over-regulation burden as perceived by K-12 schools and postsecondary education institutions. In many instances, however, customers do not differentiate between statutes and their implementing regulations, or between ED regulations and those of other federal departments that also affect customers' schools and other institutions. TAB C illustrates these misperceptions through a brief analysis of a recent critique of federal policies and regulations affecting a major private university. Thus, ED regulatory reinvention must, in some instances (especially at the postsecondary level), include statutory changes as well as cross-agency Executive Branch collaboration.

3. ED's Principles for Regulating

During the past year, the Department's views about the purpose and extent of regulation have been influenced strongly by the Administration's commitment to "reinventing government." Elementary/secondary education statutes enacted in 1994 reflected ED's commitment to less regulation, while our increased openness to customers' perspectives and concerns about ED over-regulation and "maxi-reg" statutes in some program areas is now leading to reassessments of existing statutes, regulations, and regulatory practices.

Decisions about whether and how to regulate and how to provide guidance to education customers and partners must be consistent with our reinvention values of partnership, flexibility, trust, customer sensitivity, and accountability through results. To affirm our commitment to regulate only when absolutely necessary, and then in the most flexible, most equitable, and least burdensome way possible, ED has enunciated a

set of "Principles for Regulating" that apply to every program and activity in the Department. TAB D includes a statement of these principles.

4. Education Statutes and Implementing Regulations

Ideally, statutory goals, responsibilities, and structure should fully reflect reinvention values and processes. Education statutes should provide the Secretary with broad discretion to determine whether, and to what extent, to regulate. Nevertheless, certain statutes are more compatible with flexible, non-regulatory modes of implementation than others. TAB E highlights the features of statutes that affect the detail of implementing regulations and reviews Department of Education statutes requiring "mini-regs," "semi-regs," and "maxi-regs."

III. THE CHALLENGE OF TRANSFORMATION

At the Department of Education, regulatory reinvention is not simply theoretical or aspirational. ED has made a good start in adopting and following its customer commitment and regulatory philosophy. We have solid accomplishments in increasing public involvement, streamlining and burden reduction, shifting to performance-based accountability, and refocusing enforcement energies to technical assistance and compliance.

The Department's next frontier is to continue to design creative education strategies, programs, and procedures that meld ED's customer needs and regulatory principles, while successfully confronting the tensions and challenges of the social and political environment, to achieve more fully our mission. A related critical test lies in diffusing and institutionalizing our regulatory values throughout our programs and employees at every level, so that changes for customers are real and actually enhance excellence and access in American education.

The Department believes that its regulatory reinvention initiatives in the past year have used our new statutory authority and flexibility to better serve our customers (see Tab F). We also recognize clearly that we have not yet done enough to address our customers' regulatory burden. In the coming months the Department is committed to institutionalizing its principles of regulatory reform and implementing even bolder and more creative approaches to program management that reflect the federal role in education.

TAB G outlines several reinvention regulatory initiatives and customer service improvements. In areas where the Department has the statutory flexibility to eliminate or minimize regulations (e.g., Goals 2000, School-to-Work Opportunities Act, Elementary and Secondary Education Act), it is doing so. In

areas where federal education statutes require regulations (e.g., Higher Education Act), the Department is committed to dramatically reducing and simplifying its program rules, developing outcome measures that reward high-performing institutions, and proposing statutory changes when they are necessary. The Department also is committed to simplifying its internal rulemaking processes and customer outreach activities in all potential regulatory areas.

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TAB A

REGULATORY TENSIONS AND CHALLENGES

REGULATORY TENSIONS AND CHALLENGES

Once the relatively simple regulatory housekeeping is underway, these are some of the thorny issues and complex dilemmas that ED faces at the next level of reinvention.

The Flexibility/Inertia Bind

Flexibility may just allow states and localities to do what they did before, as long as that's one of the options, because of the difficulty of change and the inertia of the status quo. BUT federal philosophy disfavors requiring change without a powerful reason. Are there carrots to entice partners to exploit flexibility? Individual schools may be most likely to take advantage of flexibility. How can it most successfully be pushed/granted down to that level? How can parents and communities be supported in driving schools to resist inertia and exploit flexibility?

Congressional and Press Oversight v. Efficient Use of Resources

Congressional oversight and the press emphasize the horror story, the dramatic -- the high-income defaulter with a red Porsche -- as proof of poor program conception, management, and enforcement. ED must meet a zero-tolerance compliance standard, even if the cost of preventing or catching an error far exceeds the value to taxpayers or program beneficiaries, or face highly critical hearings or stories.

Private companies can make reasonable economic decisions about error rates, loss, and risk. Nordstrom's can decide how much shoplifting to tolerate, given the costs of extra guards, security systems, and intrusion on customers' privacy. In the environmental arena, the wisdom of zero tolerance is being critically examined. ED, on the other hand, cannot factor in the marginal costs of achieving compliance. These costs include the government's alternative uses for that money (such as increased program services or deficit reduction), reduced public confidence in federal programs, and the costs borne by customers (such as extra paperwork, more frequent audits, or the discomfort of feeling like a cheat). Refusing to allow a reasonable error rate may at first blush appear to be efficient and responsible, but may in fact thwart the interests of both customers and government.

Equity/Burden Dilemma

Promoting equity is one of the two legs of ED's mission. The department, along with the rest of this administration, is also on record as favoring burden reduction in record-keeping, reporting, inspections, and other forms of oversight. Sometimes assuring equitable distribution of access, opportunity or services requires burdens that many argue are excessive. One person's unnecessary record or intrusive inspection may be another's ticket to a constitutionally or statutorily protected right. How do we make the difficult choices?

Trust but Verify

Distrust of the regulated drives many statutory and regulatory requirements, and in turn engenders distrust of the regulator. ED has broken that cycle in a number of programs, such as Goals 2000, School-to-Work, and Drug Free Schools; it is important, but not the whole story, that in these cases ED is dealing with states on matters of mutual and high priority. In other areas, however, lack of trust is a serious problem, such as when customers and agency staff urge ED to regulate because they do not trust state agencies to provide quality services or fair opportunities for public participation.

The problem is most vivid in student aid, where well-founded Congressional and agency distrust of some proprietary schools has led to extensive regulatory burdens on all institutions. As ED seeks to reverse its approach and set standards according to the majority of institutions that want and try to comply with program requirements, one dilemma is "Who trusts first?" Can ED set an example by providing greater flexibility and self-monitoring responsibility to its partners and customers, or is that too risky in light of the historically adversarial relationship? What will it take to assure institutions and associations that ED will not abuse honest answers about possible performance standards for educational programs?

Performance Standards v. Unpredictability of Education Outcomes

Performance measures are far more attractive than command and control, step-by-step requirements that focus on process rather than results. This approach is quite promising for some kinds of programs (for example, the fiscal side of student aid). Education is, however, a relatively risky and unpredictable business: inputs do not necessarily correlate directly with outputs, in the way that state-of-the-art smokestack scrubbers should reduce emissions at predictable rates. How can ED embrace performance measures while recognizing that sometimes even the

Tensions and Challenges

Page 3

best efforts don't produce success, and that excessive emphasis on results may produce counterproductive behaviors (e.g., keeping high risk candidates out of programs in order to maintain test results)?

Enforcing Compliance v. Turning off Funds to States

When a program partner violates program requirements, the agency often faces a painful decision between terminating program funds that would provide program services to children or other customers, or appearing to tolerate substantial violations. This choice is most excruciating when the partner is a state, given both the broad effect of on beneficiaries and the political clout that states exert. The shortage of tools available to agencies to make states honor their obligations is, ironically, a powerful motivation for finding new methods of achieving compliance through greater trust and flexibility.

Participation and Clarity v. Words and Pages

One of our clearest responsibilities is assure that customers, partners, and other citizens have meaningful opportunities to participate in the development of -- and can understand the laws and requirements that apply to -- our programs. But the public can't cope with massive quantities of rules, information, paper, and reports. As agencies reduce the deluge of words and pages, it's important to recognize that sometimes it takes more words or pages to explain the reasons for a rule, to encourage thoughtful and relevant comment, to establish the permissible level of flexibility, or to address varied circumstances, than simply to state a blunt rule. Balancing the value of additional information, in regulations, program guides, and other materials, against the burden of overload is a ticklish business, made more difficult by superficial assaults that correlate the thickness of the Federal Register with level of regulatory burden.

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B

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TAB B

REGULATION THROUGH THE EYES OF A:

- School Principal
- University President

THE WORLD OF REGULATION THROUGH THE EYES OF
A SCHOOL PRINCIPAL

I. NON-EDUCATION REGULATION

A. EDUCATION-RELATED: NON-EDUCATION DEPARTMENT

Agriculture: School lunch program
EPA: Asbestos (see page 3)
HHS: EPSDT, Head Start, Medicaid
Interior: Indian Affairs
Justice : Drug laws (DEA, etc), criminal laws,
violence prevention, crime control (dispute
resolution) Labor: School-to-Work, youth training
and summer youth employment programs
State: International exchange programs, school to
school partnership

B. GENERAL REQUIREMENTS: APPLICABLE TO ALL EMPLOYERS

Labor: OSHA, Wages and hours, Davis-Bacon
EEOC : Americans with Disabilities, Age
Discrimination Acts
Justice: Anti-drug laws, criminal laws, Immigration
and Naturalization Service
NLRB
IRS
Commerce: Patent rules, Copyright
EPA: Clean Air, Clean Water, Hazardous Substances

II. EDUCATION DEPARTMENT REGULATIONS

A. ELEMENTARY AND SECONDARY EDUCATION PROGRAMS

Key examples of Federal Assistance include:
ESEA: Formula Grant Programs
Title I: Aid to Educationally Deprived, Migrant,
Neglected and Delinquent
Title II: Professional Development
Title IV: Safe and Drug Free Schools
Title VI: Innovative Education Programs
Title VII: Bilingual Education
Title VIII: Impact Aid
Title IX: Indian Education
Title XI: Coordination of Social Services
Title XIV: Gun Free Schools

**School-To-Work
Individuals with Disabilities Act**

There are many other discretionary grant programs for which schools and local districts can compete, such as:

Technology
Gifted and Talented
Magnet Schools
Women's Educational Equity

B. OTHER EDUCATION REGULATION (CROSS-CUTTING)

Civil rights and gender equity requirements
(gender equity in athletics)
Education research and grant requirements
FERPA (Buckley Amendment)
Student Rights in Research, Experimental Programs, and
Testing (Hatch Amendment)
Disclosure Requirements (IASA 238, GEPA 429)
Drug-Free Schools and Campuses
Restrictions on Lobbying
Governmentwide Debarment and Suspension
(Nonprocurement)
Governmentwide for Drug-Free Workplace Requirements
Historic Preservation
Research restrictions
General Education Provisions Act (GEPA)
ED General Administrative Regulations (EDGAR)

III. NON-FEDERAL REGULATION

A. STATE AND LOCAL REQUIREMENTS

A principal would also have to be sure that the school complies with a myriad of state and local requirements, relating to such diverse areas as health and safety rules, fire code, food service facilities, nurse practice laws, truancy laws, zoning, parking, and child abuse reporting requirements. Moreover, state interpretation of Federal requirements often results in additional state regulation and directives.

B. DISTRICT REQUIREMENTS

A principal is also expected to follow rules established by the local educational agency (school district), which might include such topics as budget, accounting and attendance; personnel; selection of instructional materials; student records; student transportation; relationships with union members and labor-management procedures, and building use policies.

THE ASBESTOS QUANDARY

The opening day of school in New York City was delayed 11 days pending judicially-ordered asbestos removal and remediation efforts to meet minimum standards. New York City has spent \$113M on asbestos removal since fall of 1993 alone. The National School Boards Association rates asbestos regulation as a significant burden on school districts.

The Department of Education pays careful attention to the cost and potential burden on local school districts of complying with conditions of participation in education programs, but decisions about such expensive obligations for schools as meeting asbestos, lead paint removal, or now radon requirements, which may be even greater, are not calculated in the same policy conversation.

This example dramatizes that ED is only one of many federal agencies whose decisions and actions profoundly affect education. As in every area of the economy and government, the regulatory policies of each agency affect diverse entities. Often the regulating agency does not include among its regular "customers" all of the affected entities, and is unfamiliar with their particular circumstances, needs and problems. Customers sometimes feel "blindsided:" they're watching out for rules from the agency with which they consistently deal, commenting on programs and proposed rules, when out of the blue an unexpected, possibly more onerous, obligation arrives from another agency.

The point is not that children should be exposed to asbestos in their elementary and high school classrooms. The short- and long-term safety issues are complex, change over time in light of health and risk research, and warrant careful cost-benefit assessment by the responsible agency. Rather, effective inter-agency communication and coordination on cost-cutting could make policy development more complete and implementation less burdensome.

One role for the Secretary's cabinet-level education group could be to assure that these issues receive appropriate consideration and priority at the "home" agency. Asbestos in schools may be a big issue for schools, but relatively low on EPA's list for reevaluation. An education-sensitive process can advocate for education entities at sister agencies and seek burden-sensitive solutions.

**THE WORLD OF FEDERAL REGULATION THROUGH THE EYES OF
A UNIVERSITY PRESIDENT**

I. NON-EDUCATION DEPARTMENT REGULATION

A. GENERAL REQUIREMENTS

Commerce: Patent rules, import restrictions
EPA: Clean Air, Clean Water, Hazardous Substances
Justice: Antitrust, criminal laws
State: International exchange programs

B. RESEARCH RELATED REGULATION

NIH: research funding requirements
indirect cost rate regulations
human subjects research requirements
Defense: research requirements

C. HEALTH CARE SCHOOLS OR FACILITIES

HHS : Health care reimbursement rules; health
professionals practice and training requirements

D. REGULATION APPLICABLE TO ALL EMPLOYERS

IRS
EEOC
Americans with Disabilities and Age Discrimination Acts
NLRB
Labor: OSHA, Wage and hours laws
Justice: Immigration and Naturalization Service

II. EDUCATION DEPARTMENT REGULATION

A. STUDENT FINANCIAL AID

Federal Direct Student Loan Program
Federal Family Education Loan Program
Pell Grant Program
Institutional eligibility ("gatekeeping," including
accreditation, state postsecondary review, and ED
review)
Other Federal student aid programs--Campus-based; State
Student Incentive Grants, etc.

B. OTHER EDUCATION DEPARTMENT REGULATION

Civil rights and gender equity requirements
(gender equity in athletics)
Education research and grant requirements
FERPA (Buckley Amendment)
Student Rights in Research, Experimental Programs, and

Testing (Hatch Amendment)
Disclosure Requirements (IASA 238, GEPA 429) (if the
IHE enrolls any minors)
Higher education research program requirements
(including Human Research Subjects regulations)
Drug-Free Schools and Campuses
New Restrictions on Lobbying
Governmentwide Debarment and Suspension
(Nonprocurement)
Governmentwide Requirements for Drug-Free Workplace

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TAB C

MISPERCEPTIONS OF EDUCATION REGULATIONS

Ivy and Red Tape

By Steven Rattner

Four years ago, as part of the relentless struggle to balance its budget, Brown University eliminated financing for four varsity teams — two men's and two women's. Female athletes sued, and now, after a trial that dragged on three months, a Federal judge in Providence, R.I., is considering whether the university is offering enough opportunities for women to take part in sports.

The case is ironic on at least two counts. First, Brown has spent more in legal fees than it ever saved by cutting the teams. Second, few institutions are more eager to encourage women than Brown is. This fall, 54 percent of the entering class was female; in relation to the number of participants, Brown has more women's varsity teams than men's, and it has more women's teams (17) than the national average of women's and men's teams combined. But when it

Steven Rattner, a trustee of Brown University, is a general partner of Lazard Frères, investment bankers.

comes to Federal harassment of colleges and universities, Brown is hardly alone.

Late last year, without a single hearing, Congress passed the Equity in Athletics Disclosure Act, which requires colleges and universities to gather an assortment of statistics on their men's and women's sports programs — team sizes, operating and recruiting expenses, sex and annual salaries of each coach, male-female breakdown of undergraduate enrollment, spending on athletic scholarships, the ratio of male to female recipients — and to make the numbers public.

And it isn't just sports. More than two dozen special regulatory burdens are imposed on higher education. For example, Federal law requires that every university report annual crime statistics on campus. No comparable institution — no company, no landlord, no public authority — must make similar reports, even though crime on campus is generally less pervasive than on public streets a few blocks away. Graduation rates have to be

reported; how many companies must release termination rates?

Some reporting is certainly appropriate, to be sure, since colleges and universities get substantial Government aid. But Federal support of higher education gives new meaning to the term "strings attached." There are 7,000 regulations for Federal student aid programs alone. The Institute for Higher Education Policy found that in one typical year the Department of Education issued 171 letters to all institutions of higher education to clarify its regulations.

As a result of an antitrust suit, Ivy League institutions can no longer collaborate on financial aid awards, a decades-old practice intended to insure that students receive the financial assistance that they need, but not more. Hints of financial-aid bidding wars are already evident — leaving less money for books and teachers.

Why such problems for higher education? For one thing, a few widely publicized but isolated incidents have shaken public confidence and created great political support for tighter controls. For example, the crime-reporting legislation was passed after a vigorous campaign by

the parents of a student who was murdered on a Pennsylvania campus. Under such pressure, how many legislators can resist seemingly innocuous legislation?

Executive branch zeal (or lack of it) has also played a role. For all the talk of less government, neither Ronald Reagan nor George Bush signifi-

How the Feds harass higher education.

cantly deregulated higher education. During the more activist Clinton Administration, the burdens have been increasing. Why is the Government imposing requirements on higher education that it refuses to impose on itself?

Special rules are just part of the problem. Other regulations place a particularly harsh burden on colleges and universities because of their limited resources and other

attributes unique to education.

When Congress outlawed tory retirement, for example, it carved out an exemption for colleges and universities, permitting to require retirement at age 70. That special provision was justified: without mandatory retirement, the tenure system would have allowed aging professors to remain indefinitely, leaving few openings for talented new ones.

But the age-70 provision expired in 1993, and to create openings, has been forced to offer buyouts of two years' pay and other benefits. This will cost more than \$4 million, at what could hardly be a worse for Brown and other institutions: the Republicans' Contract With Ica would cut spending for higher education by \$14.4 billion five years. (The G.O.P. would offset that slightly with tax relief for college bills; President Clinton is proposing similar but greater relief.)

Colleges and universities haven't done everything right, but they are an enormously constructive force. They deserve a Federal housecleaning of old regulations and great restraint in imposing new ones.

Re:

IVY AND RED TAPE
New York TIMES (1/28/95)

General observations

The piece confirms that the public does not distinguish between Federal law and regulatory requirements, nor between Congress and agencies, as the source of obligations.

There seems to be an assumption some amorphous body called "the feds," to quote the author, are the force behind laws, forgetting that it's the public -- or subgroups like women athletes, parents of a murdered girl -- who call for laws to correct problems and right wrongs.

The positive reason FOR the requirement gets lost in criticism of the burden.

Specific issues

Title IX Athletics Litigation

Brown is engaged in litigation with student athletes under a federal statute assuring women's equal opportunity in all aspects of education. The author's complaints go to the heart of Title IX and equal opportunity, not red tape. The decision about whether to spend money on litigation defense or sports programs rests with Brown.

Equity in Athletics Disclosure Act

This is a "sunshine" law to assure that student athletes, their families and the public have access to information to understand a college's commitment to equitable athletic programs. The information will help athletes make important decisions about what school to attend.

-- The Secretary opposed EADA, and in particular the statutory provision that would have required schools to report the information to the Department of Education, successfully urging that the additional burden was unnecessary to achieve the goal of increasing students' and the public's access to information.

-- The statute requires the Secretary to publish regulations on EADA. The NPRM, published 2/3/95, tracks the statutory requirements exactly; adds no additional requirements or paperwork; and requests comment on whether any additional voluntary or regulatory steps are needed to accomplish the statutory purpose.

Campus Crime

As the author recognizes, the genesis of this law was the murder of a young woman on the Lehigh University campus. Her parents, the Clarys, mounted a passionate and successful campaign to convince Congress to require colleges and universities to publish data on crimes committed on campus to help students and parents choose a school or work to improve campus security. Parents successfully made the case to Congress that in this respect colleges to which they entrust their children ARE special, and different from landlords or businesses.

The regulations published under the statute are reasonable and do not impose unnecessary burden. The data are used, reported, and, anecdotally, seem to have focused campus attention to crime prevention in useful ways.

Graduation Rate Reporting

Graduation rate and completion reporting is legislated by the Student Right to Know Act. The author implicitly compares students to employees, asking "How many companies must release termination rates?" Unlike employees, however, students are purchasing a service, often with some substantial portion of the service paid for with federal grant or loan funds. Congress decided that students and prospective students should have access to information to help them compare institutions offering similar services. The Department is currently developing regulations to implement the Act, consulting with students and the higher education community to make the reporting requirements as useful but non-burdensome as possible.

Student Financial Aid Regulations

Complex student aid statutes, multiple grant and loan programs established by Congress, and the need to enforce program requirements at 7500 schools, some of which intentionally or negligently engage in practices that harm taxpayers and students, have led to a web of complicated rules. We agree that there are too many regulations, too little coordination, and not enough distinctions made among schools on the basis of their past performance, financial stability, and ability to manage their aid programs. Simplifying and relieving burden in this area is a prime target of regulatory reinvention in the Department of Education. SFA has several deregulatory initiatives underway to simplify existing student aid regulations.

It's worth noting that Dear Colleague letters to which the author refers are intended to be customer-friendly, non-regulatory ways to clarify regulations, provide options or background, and answer specific questions from the higher education community.

Moreover, all "Dear Colleague" letters are not sent to the same audience, but rather to institutions, lenders, guarantee agencies, state higher education agencies, as well as different officials at the same institution.

Antitrust enforcement

The Department of Justice brought an antitrust action against a number of highly selective institutions of higher education that agreed on student financial need and aid determinations. So far the courts have not found institutions of higher education to be exempt from the antitrust laws.

Mandatory retirement

When Congress passed the Age Discrimination Act, applicable to all sectors of American society, Congress in fact recognized the unique nature of tenure and the effect of the new law on colleges and universities. As a result, universities were given several years beyond the time allowed other enterprises to implement the requirements of the act, reflecting special sensitivity to the needs and interests of higher education. Brown is indeed not complaining that higher education has been singled out, but rather asking that it be accorded special treatment.

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TAB D

PRINCIPLES FOR REGULATING



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

January 31, 1995

MEMORANDUM

TO: Senior Officers

FROM: Madeleine M. Kunin
Deputy Secretary

Marshall S. Smith
Under Secretary

SUBJECT: Principles for Regulating

The Department of Education is committed to regulating only when absolutely necessary, and then in the most flexible, most equitable, least burdensome way possible. We will regulate only to improve the quality and equality of service to our customers, learners of all ages. In essence, we are establishing a rebuttable presumption against regulation unless it meets this test.

We are confident that the attached Principles for Regulating are consistent with our mission of assuring excellence and access in education and with our responsibility for effective program implementation. They also advance the regulatory reinvention and customer service objectives of NPR II and are essential to an effective partnership with states and localities. The Secretary received a positive response when he described these principles in his January 12 House testimony on the federal role in education.

These principles apply to every program and activity in the Department. Many of you have already begun to apply them rigorously in your regulatory planning, with positive results. Others should scrutinize any essential regulations in development to assure that they meet these principles. We understand that this may require your offices to rethink or rewrite regulations and guidance, and that is precisely what we ask you to do. Thank you in advance for giving this a very high priority.

Jamienne S. Studley, Deputy General Counsel for Regulations & Legislation, is coordinating Office of General Counsel assistance to you in developing, analyzing, or revising regulatory materials to meet these criteria.

Attachment

**U.S. DEPARTMENT OF EDUCATION
PRINCIPLES FOR REGULATING**

The Department of Education (ED) is committed to regulating that improves the quality and equality of services to its customers, learners of all ages. ED will regulate only when absolutely necessary, and then in the most flexible, most equitable, least burdensome way possible.

Principles for Deciding WHETHER to Regulate

- ED will regulate only when essential to serve the needs of customers by promoting quality and equality of opportunity in education.
- ED will not regulate if there is no demonstrated problem.
- ED will not regulate if the problem can be solved adequately without regulating (e.g., through local decisions, or through non-regulatory guidance by ED).
- ED will not regulate if the entities or situations to be regulated are so different from each other that a uniform approach might do more harm than good.
- ED will not regulate in the face of ambiguity alone unless the ambiguity will create a real problem if not resolved through a legally binding interpretation. (Multiple possible approaches to carrying out a statutory provision do not in themselves warrant regulatory clarification, although there may be times when a regulation could promote greater flexibility than the statutory provision makes apparent.)

Principles for Deciding HOW to Regulate

- ED will regulate no more than necessary to solve the identified problem.
- ED will minimize burden and promote multiple approaches to meeting the requirements of the law.
- ED will strive to allow federally-funded activities to be integrated with State and local reform activities.
- ED will assess the costs and benefits of the regulation and ensure that the benefits justify the costs.
- ED will, to the extent feasible, establish performance objectives, rather than specify the manner of compliance that regulated parties must adopt.
- ED will, to the extent feasible, allow flexibility so that institutional forces and incentives achieve the desired result.

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TAB E

EDUCATION STATUTES AND IMPLEMENTING REGULATIONS

EDUCATION STATUTES AND IMPLEMENTING REGULATIONS

The Executive Branch has broad authority to regulate and manage within statutes. Notwithstanding this discretion, certain statutes are more compatible with flexible, non-regulatory modes of implementation than others.

With few exceptions (e.g., the state formula program under the Drug-Free Schools and Communities Act), the Department of Education has chosen to implement its major programs through regulations. This is a decision based largely on tradition, Congressional expectation, and the desire not only to include the public in the development of policy but also to provide program participants and recipients the comprehensive guidance they often request.

Below are some of the characteristics of federal education statutes that bear on the Department's exercise of regulatory discretion. In general, the extent of regulation issued by ED tends to increase with

- * the duration of the federal role;
- * the amount of federal funds at stake;
- * the number of parties involved and the complexity of their interests (e.g., whether the statute establishes significant individual rights or merely affects administrative procedures);
- * the involvement of nongovernmental parties that are not directly accountable to the public;
- * the number of transactions that are likely;
- * the potential for fraud and/or financial misdoing;
- * the program's focus on particular transactions, activities, and beneficiaries;
- * the inappropriateness or ineffectiveness of other sources of oversight (e.g., peer review, non-regulatory guidance, or performance measures);
- * the extent to which non-compliance would cause significant harm to program beneficiaries; and
- * the level of Congressional interest or instruction.

STATUTES

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Following are examples of ED program statutes for which the Department has developed or is developing few or no regulations, some regulations, and many regulations, respectively.

MINI-REGS: Goals 2000 and School-to-Work Opportunities Act

The Department will issue no regulations under the Goals 2000: Educate America Act and few, if any, under the School-to-Work Opportunities Act of 1994, at least in part for the following reasons:

- * The duration of federal assistance is expected to be short.
- * A relatively small amount of money is at stake.
- * The types of actors are few in number and are ED's traditional clients (i.e., state education agencies (SEAs) and local education agencies (LEAs)). These actors are governmental entities, so there is a large measure of accountability built into the program through public awareness of, and involvement in, program implementation.
- * The purpose of these two statutes is to promote broad-based, comprehensive reform that is designed by states and communities to serve their own needs and situations within broad federal parameters.
- * The programs are intended to be flexible, to promote "bottom up" reform, and to foster creativity and innovation.
- * Other methods of oversight, such as peer review and performance measures, are available to protect the federal interest in seeing that program purposes are met and federal funds are well spent.

SEMI-REGS: Elementary and Secondary Education Act (ESEA)

The reauthorized ESEA, enacted as part of the 1994 Improving America's Schools Act, occupies a regulatory middle ground between institutional gatekeeping for Title IV of the Higher Education Act (HEA) and Goals 2000 and the School-to-Work Opportunities Act, at least in part for the following reasons:

- * Federal assistance is expected to be long-term.
- * ESEA involves much more federal funds than Goals 2000 and the School-to-Work Opportunities Act, but less than HEA.
- * ESEA is aimed primarily at SEAs and LEAs, but through a multiplicity of discretionary grant programs makes money available to many other recipients as well.

STATUTES

Page 3

- * ESEA focuses primarily on a variety of narrowly-described beneficiary groups and operational activities (e.g., poor children, Native Hawaiians, migrants, school construction), albeit in the context of systemic reform.

- * ESEA promotes flexibility and creativity through such measures as waivers, while promoting accountability through such mechanisms as state and local planning, peer review, and performance measures.

MAXI-REGS: Gatekeeping for Student Financial Assistance Programs

Regulations implementing Part H of Title IV of the 1965 HEA (as amended) are voluminous, at least in part for the following reasons:

- * A vast amount of federal funds (approximately \$34.4 billion in fiscal year 1995) is involved annually.

- * A large number of different types of schools (over 7,300 public and private colleges and universities, community colleges, and trade schools) of varying quality and with diverse programmatic and financial interests participate in the Title IV programs.

- * These schools, some of which are savvy and unscrupulous, are presented with powerful financial incentives to take advantage of the programs at the expense of students, parents, and taxpayers.

- * Many of these schools are not otherwise customers of ED and are not usually subject to regulation by ED outside of Title IV.

- * Non-binding mechanisms for preserving program integrity are likely to be ineffective; in the past, before sufficient binding mechanisms existed, many vocational training programs failed to provide effective training, and many schools closed suddenly because of financial problems.

- * Students are harmed when schools take advantage of the programs; in these cases, many students are unable to support themselves, repay their student loans, or obtain credit after they graduate from problem schools.

- * Ensuring that the programs' purposes are realized and that their integrity is maintained in millions of specific student cases at thousands of institutions involves a myriad of issues (e.g., program length, financial strength of the institution) that need to be addressed specifically by the Department.

Clinton Presidential Records Digital Records Marker

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F

Divider Title: _____

TAB F
FLEXIBILITY



FOR RELEASE
February 20, 1994

Contact: David Frank
1-800-SKYPAGE PIN# 115-7102

OREGON IS FIRST STATE WITH UNPRECEDENTED FLEXIBILITY IN EDUCATION PROGRAMS

SALEM, Ore., Feb. 20 -- To assist state and local school improvement efforts, U.S. Secretary of Education Richard W. Riley today named Oregon as the first state authorized to waive regulations and statutory requirements of federal education programs.

At a Willamette University legislative forum, Riley praised Oregon as a "pioneer in public participation and a national leader in the American effort to create an education system for the 21st century."

Riley was joined by U.S. Sen. Mark O. Hatfield, R-Oregon, Gov. John Kitzhaber and State Superintendent of Schools Norma Paulus.

"Ed-Flex" is a historic new partnership that will give Oregon and five other trailblazing states the authority to waive federal regulations and statutory requirements that can impede local and state efforts to improve teaching and learning.

"Your leadership is being noticed and that's healthy and hopeful because you need to know that you are going in the right direction," Riley said. "Finding ways to improve teaching and learning are critical components of school change. And thanks to the strong leadership and foresight of Sen. Hatfield, we can now cut the red tape that impedes many prospects for learning."

To qualify for the waiver authority under the Education Flexibility (Ed-Flex) Partnership

-MORE-

Demonstration Program, Oregon designed and received approval for a comprehensive school improvement plan under the Goals 2000: Educate America Act. Oregon also pledged to:

- o Eliminate unnecessary, burdensome state and local education regulations;
- o And, hold schools and districts accountable for student performance.

All states participating in Goals 2000 -- and the school districts and schools in these states -- are eligible to apply for general waivers from various federal education regulations. Under these new waivers, schools still will be expected to observe civil rights statutes, as well as health and safety standards.

The Ed-Flex demonstration program is even more dramatic evidence of flexibility. It permits the waiver decision to be made at the state -- not the federal -- level in six states.

The new provisions respond to a longstanding request that originated during a 1989 education summit convened by President Bush and the nation's governors -- including President Clinton and Deputy Education Secretary Madeleine Kunin. The governors asked the federal government for more flexibility in exchange for more accountability.

The initiative also is reflected in how the department is implementing the Goals 2000 Act. The new education reform law has no regulations and requires states to submit only a four-page application in order to receive first-year federal funds. Forty-four states already have received funds to develop their own blueprints for better schools.

Riley announced last week that Oregon was the first state with an approved Goals 2000 school improvement plan and thus the first state eligible to receive its second-year Goals 2000 funding -- a total of approximately \$4,125,341.

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UNITED STATES
DEPARTMENT OF EDUCATION



NEWS

FOR RELEASE
February 15, 1995

Contact: Melinda Kitchell
(202) 401-1008

OREGON IS FIRST WITH GOALS 2000 REFORM PLAN

Oregon will be the first state to receive funding for a comprehensive state education reform plan under the Goals 2000: Educate America Act, U.S. Secretary of Education Richard W. Riley announced today.

With an approved school improvement plan, Oregon becomes the first state eligible to receive second-year Goals 2000 funding and waivers from regulations and statutory requirements that apply to other federal education programs. There are no federal regulations for Goals 2000.

Under the U.S. Department of Education's new "EdFlex" initiative, Oregon may become one of six demonstration states permitted to waive federal regulatory and statutory requirements from other programs that could impede reform efforts.

"Oregon has long been recognized as a leader in education reform efforts to improve teaching and learning for all students," Riley said in accepting the state's plan. "Approval of this first state plan is a milestone in the Goals 2000 effort and shows that states are moving forward to fulfill the promise of Goals 2000 -- to educate children to their greatest potential."

"The nation has turned its attention to school improvement," said Oregon State School Superintendent Norma Paulus, "and turned to Oregon as a leader."

-MORE-

The Goals 2000: Educate America Act provides resources to states and communities to develop and implement community- and school-based education reforms aimed at helping students reach challenging academic and occupational skill standards. To date, 44 states have elected to participate in Goals 2000 and have received first-year funding to develop a reform plan.

Highlights of Oregon's state school improvement plan include:

- o a legislative framework to improve teaching and learning, adopted and developed over 10 years and linked to a 20-year strategic vision for economic development;
- o an annual report card to measure state and school district progress toward meeting state and national education goals and to ensure accountability;
- o 21st Century Schools Site Councils composed of parents, teachers, school administrators, students, community members and business leaders to help shape school improvement;
- o a waiver process that holds schools accountable for meeting clear and measurable standards of improved learning -- in exchange for flexibility;
- o restructuring grants to local school districts to build on existing reform efforts;
- o implementation of technology in classrooms;
- o opportunities for all children to learn through alternative learning sites, public school choice, special strategies for at-risk students; and,
- o a comprehensive School-to-Work Opportunities System.

Oregon will receive approximately \$4,125,341 in fiscal year 1995 Goals 2000 funds to begin implementing the plan. The state received \$1,024,176 in 1994 to develop a comprehensive reform plan.

The Oregon plan was reviewed by a review panel of educators from the across the country and was approved by Thomas Payzant, assistant secretary for elementary and secondary education.

The Education Department also assists states by offering models of good practice and through other programs such as the School-to-Work Opportunities Act, the Improving America's Schools Act and the Safe Schools Act.

On Feb. 20, Riley will speak to Oregon legislators, business leaders and educators during a legislative forum to be held at Willamette University in Salem.

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UNITED STATES
DEPARTMENT OF EDUCATION



NEWS

FOR RELEASE
January 25, 1995

Contact: Kathryn Kahler
(202) 401-3026

RILEY OFFERS STATES AND COMMUNITIES NEW FLEXIBILITY

U.S. Secretary of Education Richard W. Riley today offered states and communities unprecedented flexibility in using federal funds to help students reach challenging standards and to make schools safer and more disciplined.

In a letter to governors and state education officials, Riley described a new federal-state partnership to help states and school districts carry out effective school reform focusing on challenging standards and accountability.

"As former governors, President Clinton and I know firsthand the tremendous energy and effort that states and communities are devoting to improving education for our nation's youngsters," Riley said. "The success of such efforts depends on all of us seeking new ways to improve teaching and learning for all students. For the first time, we can now cut the red tape that wraps so many education programs."

The new flexibility program responds to a longstanding request, Riley said. During a 1989 education summit convened by President Bush, the nation's governors - including President Clinton and Education Deputy Secretary Madeleine Kunin - asked the federal government to provide more flexibility and accountability.

Riley said the new approach includes provisions of legislation enacted with bipartisan support during the last Congress, such as the Education Flexibility (Ed-Flex) Partnership

-MORE-

Demonstration Program, general waivers from federal statutes and regulations under key federal education programs, and a new Charter Schools flexibility provision.

The most dramatic initiative is the Ed-Flex Program, which for the first time will give six states authority to waive federal requirements that can impede local and state efforts to improve their schools.

To be considered for a waiver, states need to:

- o eliminate unnecessary, burdensome state and local education regulations;
- o hold schools and districts accountable for student performance;
- o and, have an approved Goals 2000 state improvement plan.

Riley said the flexibility initiative is also reflected in how the department is implementing the new Goals 2000: Educate America Act. No regulations will be published for the new education reform law, which invites states to submit a four-page application in order to receive first-year federal funds. Riley said 43 states have already received funds to develop their own blueprints for better schools.

In addition to the Ed-Flex provision, the initiative offers general waivers to states, school districts and schools under Goals 2000, the Improving America's Schools Act (IASA), and the School-to-Work Opportunities Act.

To apply for a waiver, applicants are asked to describe how federal requirements impede reform efforts and how without them, quality can be improved. Waivers can be provided under major programs of IASA: Title I (Helping Disadvantaged Children Reach High Standards); Title II (Eisenhower Professional Development); Title IV (Safe and Drug-

Free Schools and Communities); Title VI (Innovative Education Program Strategies); and Title VII, Part C (Emergency Immigrant Education), as well as under the Perkins Vocational and Applied Technology Education Act.

Under the new waivers, schools will be expected to continue to observe civil rights statutes, as well as health and safety standards.

Finally, a new Charter Schools Demonstration Program will allow states with charter school laws to receive start-up grants under the IASA and to apply for waivers of all federal regulations to maximize flexibility. As the name implies, groups and organizations can apply for a charter to establish and operate a public school, based on state statutes.

Riley said the department will process waiver applications as soon as they are received and is offering assistance to states and communities on a new waiver assistance line at (202) 401-7801, or through the Department's toll-free number, 1-800-USA-LEARN.

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FLEXIBILITY IN K-12 PROGRAM PLANNING AND ADMINISTRATION

In addition to promulgating no Goals 2000 regulations and eliminating much of its regulation of Title I of the Elementary and Secondary Education Act (ESEA), the Department is creatively expanding its partnership-with-customers philosophy through the provision of numerous flexibility options for state and local education agencies (SEAs and LEAs).

Three initiatives are particularly significant:

- (1) Education Flexibility Partnership Demonstration Program**
- (2) Consolidated State Planning**
- (3) Waivers of Statutory and Regulatory Program Requirements**

(1) The Ed-Flex Program was authorized by the Goals 2000: Educate America Act (P.L. 103-227). To foster comprehensive education improvement in a state, the Secretary will grant up to six SEAs with approved Goals 2000 state improvement plans the authority to waive certain federal program requirements for the SEA or for any LEA or school within the state. The waivers are applicable to provisions of ESEA Title I, Title II, Title IV, Title VI, and Title VII(C), as well as to the Carl D. Perkins Vocational and Applied Technology Education Act.

On February 20, Secretary Riley announced that Oregon is the first state authorized to waive federal regulatory and statutory requirements under the Ed-Flex Program. To qualify for this broad waiver authority, Oregon designed and received ED approval for a comprehensive school improvement plan under Goals 2000; indeed, on February 15 Oregon became the first state approved by the Secretary to receive second-year Goals 2000 funding. Oregon also pledged in its Ed-Flex Program application to eliminate unnecessary, burdensome state and local education regulations and to hold schools and districts accountable for student performance. In addition, schools still will be expected to observe civil rights statutes, as well as health and safety standards.

The Department is actively working with and encouraging all 44 states who have elected to participate in Goals 2000 and received first-year Goals 2000 funding to complete their respective state education improvement plans and thereby qualify both for second-year Goals 2000 funding and for the opportunity to apply for waiver authority under the Ed-Flex Program.

(2) On January 13, ED published a notice proposing that states could **consolidate state K-12 program planning**. The consolidated planning process, authorized by the Congress in the 1994 Improving America's Schools Act (IASA) P.L. 103-382), would enable ED to avoid writing detailed rules and regulations for the K-12 programs Congress revised last year and create unprecedented flexibility for states to integrate their planning and administration of federal education programs.

Comments on the ED proposal were due by February 13, and ED now expects to issue guidelines later this spring for states wishing to submit consolidated plans for up to 13 federally-funded programs. These changes reflect increased recognition of states as educational partners. Once these guidelines are published, ED will actively encourage states to consolidate their applications and plans for the identified programs.

(3) The two ED regulatory reinvention initiatives summarized above describe major Department efforts to maximize SEA and LEA flexibility through the expanded use of waivers and other school improvement approaches. ED also is working with its customers to initiate **expanded waiver authority** in other programs as well.

For example, ED's new **Charter Schools Demonstration Program** will allow states with charter school laws to receive start-up grants under the IASA and to apply for waivers of all federal regulations to maximize flexibility. As the name of the program implies, groups and organizations can apply for a charter to establish and operate a public school, based on state statutes. The Department also is offering general waivers to states, school districts, and schools under the **School-to-Work Opportunities Act**.

STREAMLINED GOALS 2000 APPLICATION PROCESS

Goals 2000 provides the framework for the Department's education reform initiatives --- and for its regulatory reform initiatives. This program provides great flexibility to schools, school districts, and states to develop and implement reforms based on their own challenging standards.

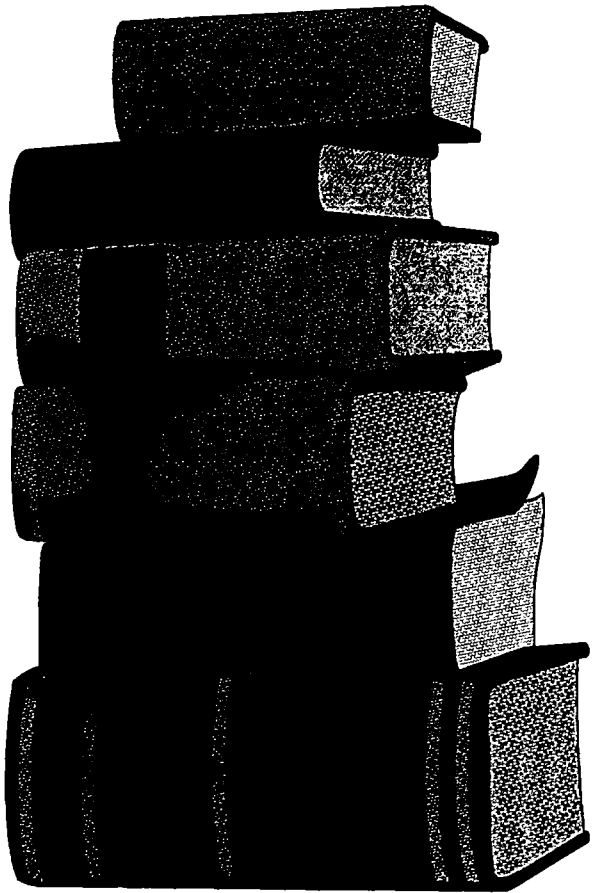
The Department's implementation of Goals 2000 is a model of thinking about and designing a federal program differently. No regulations will be issued for Goals 2000 state and local reform grants. Moreover, whereas in prior years states produced voluminous applications for ED's state grants based upon lists of required information, ED now has designed and is using an easy-to-read **four-page** planning grant application form. This form sends a strong and unambiguous signal to the states that ED means to be customer-friendly and that it has reduced its regulatory guidance and program requirements to the bare essentials when permitted by statute. Indeed, the Vice President's Hammer Award was conferred on the ED team that designed this four-page form.

But the Department's streamlining of the Goals 2000 activity is not finished. In the coming year, ED will actively encourage states to continue to develop comprehensive K-12 improvement plans that reflect state and local priorities and standards and to use most of their federal grants to provide assistance to local school districts. The Department will continue to provide advice and guidance³ to states and school districts without imposing regulations on their efforts. Indeed, ED projects that 90 percent of all funding in the second year of Goals 2000 will flow directly to local school districts, which is an entirely new way of doing business for the federal government.

Streamlined Goals 2000 Application

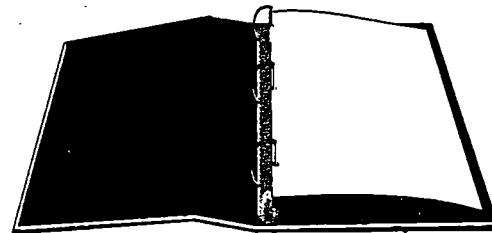
Old Way

Voluminous application
from States based on
lists of required information.



New Way

4-page State
planning grant
application
(received Vice
President's
"Hammer
Award").



FLEXIBILITY UNDER FEDERAL STATUTES AND REGULATIONS

■ **WAIVERS UNDER GOALS 2000, IMPROVING AMERICA'S SCHOOLS ACT (IASA), AND SCHOOL-TO-WORK OPPORTUNITIES ACT**

Requirements of several major programs (and other minor ones) can be waived:

- ✓ Title I, Part A of the ESEA (Helping Disadvantaged Children Meet High Standards)
- ✓ Title I, Part B (Even Start)
- ✓ Title I, Part C (Migrant Education)
- ✓ Title I, Part D (Neglected, Delinquent or At Risk Youth)
- ✓ Title II (Eisenhower Professional Development)
- ✓ Title III, Part A, Subpart 2 (Technology for Education)
- ✓ Title IV, Part A (Safe and Drug-Free Schools and Communities)
- ✓ Title VI (Innovative Education Program Strategies)
- ✓ Title VII, Part C (Emergency Immigrant Education)
- ✓ Other Programs Within the ESEA (except Impact Aid)

- ✓ Title II of the Carl D. Perkins Vocational and Applied Technology Act
- ✓ All Other State Formula Programs under the Perkins Act

- ✓ General Education Provisions Act (GEPA)
- ✓ Education Department General Administrative Regulations (EDGAR)

These waivers are subject to certain exclusions, including health, safety & civil rights.

■ **ED-FLEX (Education Flexibility Partnership Demonstration Program of Goals 2000)**

The Secretary may delegate, to up to six States with approved Goals 2000 plans, the authority to grant waivers (over most of the above programs) to themselves and to school districts. (Oregon was named the first Ed-Flex state on February 17).

■ **CHARTER SCHOOLS**

The Secretary has extraordinarily broad authority to provide waivers to charter schools covering any statutory or regulatory requirement over which the Secretary exercises administrative authority, except certain minimum elements of a charter school.

■ **SCHOOLWIDE PROGRAMS UNDER TITLE I**

Qualifying schools may combine most of their federal funds to support schoolwide reform. They are also free from most federal requirements, without seeking a waiver.

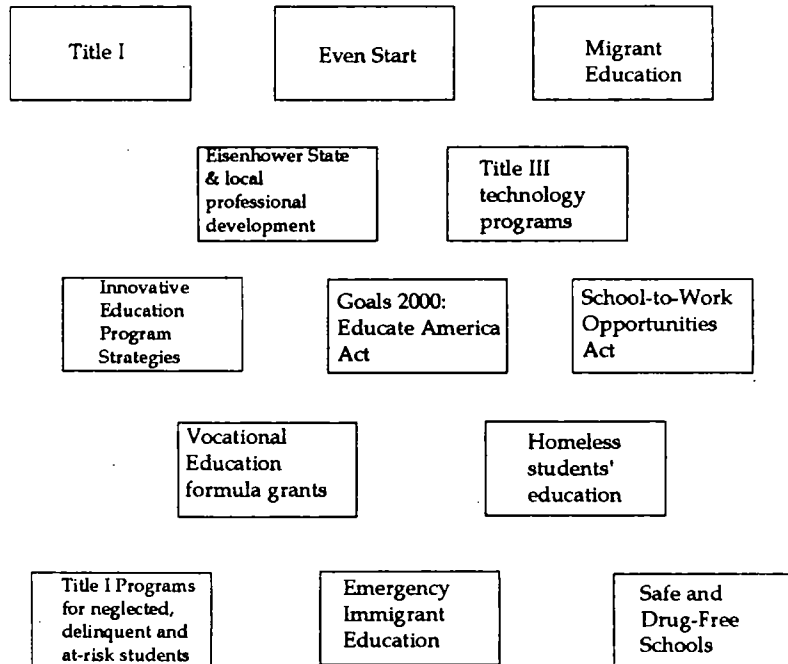
■ **CONSOLIDATED PLANS FOR FEDERAL FUNDS**

States and school districts may submit a single plan for most federal funds supporting elementary and secondary education.

Consolidated K-12 Program Planning

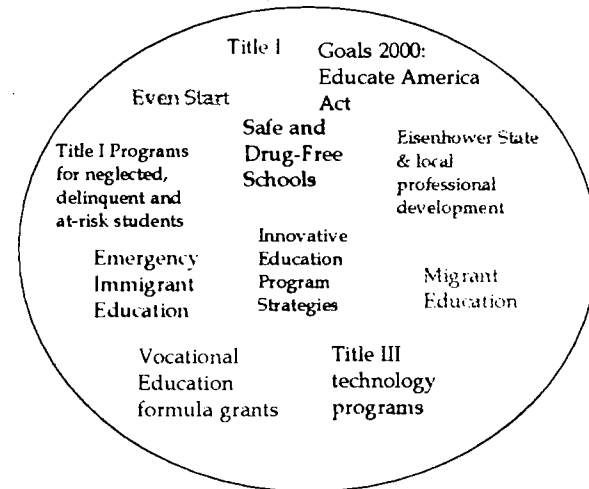
Old Way

Separate State plan
for 13 Federal
K-12 Programs.



New Way

Single consolidated
State plan, with each
State selecting which of
the 13 programs to include.





UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

January 23, 1995

Dear Superintendent

As former Governors, President Clinton and I know firsthand the tremendous energy and effort that States and communities are devoting to improving education for our Nation's youngsters. The success of such efforts depends on all of us seeking new ways to improve teaching and learning for all students.

We also know that the needs of each State and community differ significantly from each other. A one-size-fits-all approach to improving education will not work. Governors have always recognized this, and have therefore insisted that Federal education programs provide greater flexibility for States and local communities.

That is why, at the Education Summit in 1989, the Governors and President Bush agreed to seek legislation that would "... provide State and local recipients greater flexibility in the use of federal funds, in return for firm commitments to improved levels of education and skill training." They also agreed then that "[F]ederal ... executives need authority to waive statutory and regulatory provisions in return for greater accountability for results."

New legislation enacted last year, with strong bipartisan support, delivers on this agreement. It allows the U.S. Department of Education to provide far greater flexibility for State and local use of education dollars in order to improve teaching and learning. I am pleased by this shift and have been working hard to use this authority to its fullest.

I am writing you to outline a number of ways in which your State may use federal program resources to best meet your needs. This letter and the attached documents describe the major legislative provisions that support greater flexibility, as well as the Department's commitment to supporting flexibility in how it carries out its initiatives.

The Goals 2000: Educate America Act, the Improving America's Schools Act (IASA), and the School-to-Work Opportunities Act foster a new partnership with States and communities to help all students learn to challenging standards. Broad waiver provisions, schoolwide

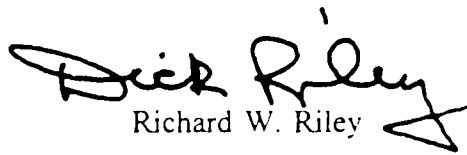
approaches, charter schools, and a greater investment in teams of teachers, parents and school and community leaders working to find innovative solutions are elements of this new partnership.

Under Goals 2000's Education Flexibility Partnership (Ed-Flex) Program, the Department will authorize up to six States to waive, for key federal education programs, the vast majority of requirements which impede State and local education improvement efforts. An invitation for States to participate in the Ed-Flex program, as well as guidance on all the Department's waiver authorities under Goals 2000, School-to-Work, and the IASA, are attached to this letter.

Our commitment to flexibility extends to how we carry out these initiatives. The Department is implementing all new laws with a minimum of regulations and paperwork. For example, the application for first-year Goals 2000 funding was only four pages long, no regulations will be issued for Goals 2000, and the typical length of time for reviewing and funding applications has been less than a month. Likewise, the Office of Elementary and Secondary Education is reorganizing its monitoring to sharpen its focus on progress toward results defined by each State, rather than by Washington. An interoffice team is reviewing all internal proposals for regulations on the Improving America's Schools Act and choosing alternatives to regulation whenever possible.

I am confident that these flexibility measures will help support your efforts to improve education for all students in your State. If you or your staff are interested in exploring how to take advantage of these new opportunities, please feel free to contact my Senior Advisor, Mike Cohen, at (202) 401-3385.

Yours sincerely,


Richard W. Riley

Attachments



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

Promoting Flexibility to Support State and Community Education Reform Efforts: An Overview

A. Waivers from federal statutory and regulatory requirements.

States, school districts and schools may now request waivers from the vast majority of statutory and regulatory requirements in the reauthorized Elementary and Secondary Education Act, and certain other federal education programs. The Department is prepared to work with your State to remove federal requirements impeding your ability to help all children reach challenging academic standards. **Attachment A** provides guidance explaining the waiver process in greater detail. It also contains copies of the waiver provisions in Goals 2000, School-to-Work, and the Improving America's Schools Act (IASA), and a chart comparing these authorities. States or school districts considering requesting waivers may contact Bill Kincaid on the Department's waiver assistance line, on (202) 401-7801 or 1-800-USA-LEARN, or they may contact the relevant program office.

B. Ed-Flex Demonstration Program: authority for states to grant federal waivers.

The Goals 2000: Educate America Act establishes an educational flexibility demonstration program (Ed-Flex program) under which the Secretary may delegate up to six State educational agencies (SEAs) the authority to waive certain Federal statutory or regulatory requirements affecting the State, its districts and schools. To be eligible to apply for Ed-Flex status, an SEA must have an approved State improvement plan under Goals 2000. In addition, the SEA must waive its own related statutory or regulatory education requirements, while holding LEAs and schools affected by the waivers accountable for the performance of their students.

The Secretary is prepared to review Ed-Flex applications as soon as they are received, and to grant Ed-Flex waiver authority to a State whose application demonstrates substantial promise of assisting that State, its communities, and schools in carrying out comprehensive education reform. Those States desiring to participate in the program are encouraged to submit their applications as soon as possible. **Attachment B** is an invitation for States to participate in Ed-Flex. For additional information, contact Tom Fagan on (202) 401-0039.

C. Charter Schools Demonstration Program.

The development of public charter schools is an important new strategy to promote local innovation and results-based accountability in education. Because one of the greatest challenges facing charter school developers is getting started, the new Improving America's Schools Act provides start-up grants to public charter schools, in States with charter school laws, for up to three years. Moreover, the Charter Schools program in the IASA gives the Secretary broad authority to waive, for public charter schools, most federal education laws and regulations.



The Administration asked for \$15 million to fund this grant program in FY 1995, and Congress appropriated \$6 million. In addition to these funds, States can use funds under Goals 2000, the IASA, and other federal programs to support the development and operations of charter schools. Attachment C provides a description of how States, and charter schools, may apply for these funds.

D. Other provisions promoting flexibility in the Improving America's Schools Act.

The Improving America's Schools Act of 1994 (IASA), which reauthorized the Elementary and Secondary Education Act (ESEA), promotes new flexibility for comprehensive school reform efforts in States, communities, and schools. New opportunities for flexibility under the IASA include the following:

Schoolwide programs.

Title I significantly expands the number of schools eligible to become "schoolwide" programs. By the 1996 school year, schools with at least 50% low-income children will be eligible for schoolwide status, increasing the total number of potential schoolwide programs from 8,000 to 20,000 schools nationwide.

Moreover, for the first time, these schools will be able to combine most of their federal funds, not solely their Title I funds, to support schoolwide reform. In addition, they will be free from most federal requirements. In return, these schools will develop comprehensive plans to improve teaching and learning in their entire school and meet the needs of all children served.

Elimination of many federal requirements for Chapter 1 testing and reporting.

The IASA eliminates burdensome Title I testing and reporting requirements. No longer will the federal government require schools to give annual norm-referenced tests to all participating students in grades 2-12. Nor will the federal government require States to comply with burdensome annual reporting requirements. Instead, States will use their own assessments to evaluate the progress of schools and districts served by Title I programs. Moreover, assessment results will be used to inform parents, teachers, principals and others of progress, rather than be reported to the federal government.

Submitting a single (consolidated) plan to receive most federal funds.

The Improving America's Schools Act allows the Secretary of Education to accept a single State plan for most federal funds supporting elementary and secondary education. The development of a single plan eliminates the need to develop separate, often overlapping, plans for many federal programs. A consolidated plan can reduce program

fragmentation and improve the use of federal funds to support State and local reform efforts. Under the IASA, States may also enable school districts to develop a single plan for many federal programs.

A copy of the Federal Register notice, published on January 13, 1994, which outlines how States and school districts may take full advantage of this opportunity, is being mailed to you under separate cover. If you are interested in discussing this further, please contact Bill Wooten on (202) 260-1922.

Consolidation of State and local administrative funds.

An SEA may consolidate funds available for State administration under Title I, other major IASA programs, and Goals 2000. In addition, an SEA may authorize LEAs to consolidate administrative funds.

ATTACHMENT A

GUIDANCE ON WAIVERS UNDER THE GOALS 2000: EDUCATE AMERICA ACT, THE ELEMENTARY AND SECONDARY EDUCATION ACT, AND THE SCHOOL-TO-WORK OPPORTUNITIES ACT

INTRODUCTION

The recent enactment of three pieces of legislation -- the Goals 2000: Educate America Act¹, the School-to-Work Opportunities Act², and the reauthorized Elementary and Secondary Education Act (ESEA)³ -- has shifted significantly the focus of Federal education programs. Rigid, fragmented programs that have often impeded innovation in education at the local level have been replaced with flexible initiatives that promote systemwide educational improvement based on challenging academic standards for all students. States, communities and schools face fewer burdens and requirements, and have real opportunities to implement meaningful and creative changes to their education systems.

As part of this increased flexibility, the Secretary of Education has been given unprecedented authority under Goals 2000, the ESEA, and School-to-Work to waive certain Federal statutory and regulatory requirements. This guidance, which has been drafted in question and answer form, highlights some of the significant aspects of the new waiver provisions, and describes the process by which the Department will review waiver requests. Attached to the guidance are the Goals 2000, ESEA, and School-to-Work waiver provisions, as well as a chart that provides a more detailed comparison of the waiver authorities.

¹ P.L. 103-227 (Mar. 31, 1994) (20 USC 5801 et seq.).

² P.L. 103-239 (May 4, 1994) (20 USC 6101 et seq.).

³ The ESEA was reauthorized by the Improving America's School Act of 1994 (IASA), P.L. 103-382 (Oct. 20, 1994) (20 USC 6301 et seq.).

WAIVER QUESTIONS AND ANSWERS

Will the Department assist potential applicants in preparing waiver requests?

Yes. The Department is committed to assisting potential applicants with their waiver requests. The Department also encourages dialogue with applicants during the period a request is being reviewed. To receive assistance, potential waiver applicants may contact Bill Kincaid on the Department's waiver assistance line, on (202) 401-7801 or 1-800-USA-LEARN, FAX: (202) 401-4353, or they may contact the relevant program office.

What statutory and regulatory requirements may be waived?

Although there is considerable overlap among the waiver provisions in Goals 2000, the ESEA, and School-to-Work, there are some differences in the requirements that may be waived under each program.

A. Waiver authority under Goals 2000

Subject to the limitations discussed below, under Goals 2000, the Secretary is authorized to waive any statutory or regulatory requirement applicable to the following programs or Acts:

- ESEA Title I -- Helping Disadvantaged Children Reach High Standards
- ESEA Title II -- Eisenhower Professional Development
- ESEA Title IV -- Safe and Drug-Free Schools and Communities
- ESEA Title VI -- Innovative Education Program Strategies
- ESEA Title VII, Part C -- Emergency Immigrant Education
- The Perkins Vocational and Applied Technology Education Act⁴

Under Goals 2000, there may be waivers of program-specific requirements, as well as waivers of other statutory or regulatory requirements "applicable" to the enumerated programs or Acts.

⁴ The IASA contains conforming amendments that were intended to replace the program references in the Goals 2000 legislation with the appropriate references in the reauthorized ESEA. However, in a technical drafting error, certain provisions of the ESEA bill were reorganized after the conforming amendments were drafted, without corresponding changes to the conforming amendments. The references above refer to the programs for which Congress intended waivers to be authorized.

Thus, under Goals 2000, the Secretary has authority to waive requirements under the General Education Provisions Act (GEPA)⁵ and the Education Department General Administrative Regulations (EDGAR)⁶.

B. Waiver authority under School-to-Work

Subject to the limitations discussed below, the School-to-Work legislation authorizes the Secretary to waive statutory or regulatory requirements of the following programs or Acts:

- ESEA Title I -- Helping Disadvantaged Children Reach High Standards
- ESEA Title II -- Eisenhower Professional Development
- ESEA Title IV -- Safe and Drug-Free Schools and Communities
- ESEA Title VI -- Innovative Education Program Strategies
- ESEA Title VII, Part C -- Emergency Immigrant Education
- The Perkins Vocational and Applied Technology Education Act⁷

Although the list of programs and acts subject to the School-to-Work and Goals 2000 waiver authorities is the same, the School-to-Work authority is somewhat more limited -- the Secretary may waive requirements of the specified program statutes and implementing regulations (e.g., the Title I supplement, not supplant requirement), but may not waive other requirements applicable to these programs. Thus, under School-to-Work, waivers of GEPA and EDGAR requirements would not be permitted.

The School-to-Work Act also authorizes the Secretary of Labor to waive certain requirements under the Job Training Partnership Act.

C. Waiver authority under the ESEA

Under the ESEA waiver authority, subject to the restrictions noted below, the Secretary is authorized to waive any statutory or regulatory requirement of the ESEA. In certain respects, this waiver authority is broader than the authority under Goals 2000 or School-to-Work. Under the ESEA waiver authority, the Secretary has broad discretion to waive any ESEA requirement, subject to the specific limitations discussed below. Under the Goals 2000 and School-to-Work waiver authority, on the other hand, the Secretary may only waive requirements of certain specified ESEA programs. Like the School-to-Work waiver

⁵ 20 USC 1221 et seq.

⁶ 34 CFR Parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86.

⁷ The conforming amendments for School-to-Work contain the same drafting errors as those for Goals 2000. See note 4 above.

provisions, the ESEA provisions do not permit waivers of other, non-programmatic requirements applicable to the ESEA. Thus, GEPA and EDGAR requirements may not be waived under the ESEA waiver authority.

The Department recognizes that these differences in the waiver authorities can be confusing, and encourages potential applicants to consult the attached chart and to contact the Department for assistance.

Are there certain statutory or regulatory requirements that may not be waived?

Yes. For each of the waiver authorities, there are certain requirements that may not be waived. These requirements are listed in the attached waiver chart. Some requirements -- for example, maintenance of effort, comparability, civil rights requirements,⁸ and health and safety requirements -- may not be waived under any of the waiver authorities.⁹ In other instances, the waiver restrictions vary depending on the authority under which the waiver is sought. For example, a State educational agency (SEA) may obtain a waiver of a supplanting prohibition under the Goals 2000 or School-to-Work waiver authorities, but not under the ESEA.

Who is eligible to apply for a waiver?

The eligibility of an applicant to apply for a waiver depends on the authority under which the waiver is sought. (The attached waiver chart summarizes the eligibility requirements of waiver applicants.)

Under Goals 2000, only an SEA may apply directly to the Secretary for a waiver. A local educational agency (LEA) or school seeking a waiver under Goals 2000 must first submit a waiver application to its SEA for review. The SEA then forwards those requests that it approves to the Secretary for his review.

Likewise, under the ESEA, the SEA may apply directly to the Secretary for a waiver. In

⁸ Although the Goals 2000 waiver limitations do not expressly include civil rights requirements and health and safety requirements, the Secretary has determined that waivers of these requirements would be unwarranted under any circumstance. Waivers of these requirements are not needed to carry out comprehensive education reform or otherwise meet the purposes of the Goals 2000 legislation.

⁹ The restrictions applicable to the charter school waiver provisions are discussed separately in this guidance.

addition, an LEA may apply directly to the Secretary for a waiver on its own behalf or on behalf of a school, after the LEA or school request has been reviewed by the SEA. Thus, while the SEA has the responsibility of reviewing LEA and school waiver requests under the ESEA, it is the LEA's responsibility to submit these requests to the Secretary. In addition, under the ESEA, an Indian tribe may submit a waiver request to the Secretary on behalf of schools operated by the tribe.

Under School-to-Work, the State may submit to the Secretary a waiver request on its own behalf, or on behalf of a local partnership. Furthermore, the local partnership may submit its request to the Secretary directly if the State fails to act upon the request within 30 days of receiving the waiver application.

What is the address for the submission of waiver requests to the Secretary?

Requests for waivers under Goals 2000, the ESEA, or School-to-Work should be sent to Richard W. Riley, Secretary, U.S. Department of Education, Attention: Waiver Action Board, 600 Independence Avenue, S.W., Room 6300, Washington, D.C. 20202.

May an applicant simultaneously seek a waiver under more than one of the waiver authorities?

Yes. An applicant may simultaneously seek a waiver under more than one authority so long as it is eligible to apply under those waiver authorities. For example, an SEA may simultaneously seek a waiver of Title I requirements under Goals 2000, the ESEA, and School-to-Work.

May an applicant simultaneously seek waivers of several different requirements?

Yes. The Department encourages potential applicants to submit comprehensive waiver requests where appropriate, rather than separate requests.

Is there a specific waiver application form?

No. There is not a specific form that must be completed by an applicant seeking a waiver. Instead, waiver applicants have the flexibility to submit requests in a manner that best meets their needs and circumstances, while still addressing the specific requirements of the respective waiver authorities.

What kind of supporting documentation must be submitted with a waiver request?

The individual waiver authorities contain waiver criteria and application requirements that should guide applicants in preparing their waiver submissions. The type of supporting documentation that must be submitted to meet these requirements and satisfy the criteria will vary depending on the nature of the waiver sought. The Department will work with waiver applicants in addressing any concerns that they may have about a particular request.

Goals 2000 waivers are only available to SEAs, LEAs and schools in States with approved Goals 2000 State improvement plans. However, the Goals 2000 waiver request may be submitted prior to the actual approval of the plan. For example, SEAs may want to include waiver requests as part of their State plan submission. The waivers may not be granted, however, until the plan is approved. The waiver applicant must demonstrate, among other things, that the requirements requested to be waived impede the ability to carry out the State or local improvement plan and that the SEA has waived, or agrees to waive, similar requirements of State law.

ESEA waiver provisions for formula grant programs become effective on July 1, 1995. To be granted an ESEA waiver, an applicant must demonstrate, among other things, how the waiver will increase quality of instruction or improve teaching and learning, and describe which similar requirements of State or local law will be waived.

School-to-Work waivers are only available to States and local partnerships with approved School-to-Work plans. However, the School-to-Work waiver request may be submitted prior to the actual approval of the plan. For a School-to-Work waiver, an applicant must describe specific, positive outcomes expected from the waiver, and explain why the outcomes cannot be achieved while complying with the requirement. As with the other waiver authorities, the State must also waive, or agree to waive, similar requirements of State law.

The attached chart details the specific requirements and criteria that must be met under each of the waiver authorities.

How will the Department review waiver requests?

The Secretary has established within the Department a Waiver Action Board to review applications for waivers under Goals 2000, the ESEA, and School-to-Work. The Board will be chaired by the Assistant Secretary for Elementary and Secondary Education, and include the Assistant Secretary for Vocational and Adult Education, the Director of Bilingual Education and Minority Languages Affairs, and the General Counsel. As needed, practitioners in residence at the Department and other senior officials will assist in the review process. The Waiver Action Board will help ensure that waiver requests across categorical programs are handled in a consistent and expeditious manner. The Board will make its

recommendations to the Under Secretary, who has been delegated the authority to make the final decision on a waiver request.

How long will it take the Department to review a waiver request?

In recognition of its desire to best serve the needs of students, the Department intends to act upon waiver requests as expeditiously as possible. The Department has established sixty days from receipt of a waiver request with the necessary documentation as the target date by which a waiver decision will be made. The Department will strive to make waiver decisions in less than sixty days whenever possible.

May the Department approve part of a waiver request?

Yes. The Department will approve portions of a waiver request, even if the entire request is not approvable. By permitting approval of part of a waiver request, the Department encourages applicants to consider waivers across various programs in light of their reform efforts and to consolidate individual requests.

Will the Department approve waivers on a multi-year basis?

Yes. In many instances, multi-year waivers may be needed to change fundamentally policies to improve teaching and learning. Under the ESEA, Goals 2000, and School-to-Work, waivers may be granted for up to three, four, and five years, respectively. Where appropriate, the Department will grant waivers for the maximum period possible to encourage the use of waivers, where needed, to advance systemic reform. These periods may be extended when the waivers have been effective in achieving their purposes.

In addition to authorizing waivers of certain statutory and regulatory requirements relating to education, does the School-to-Work Opportunities Act authorize other waivers?

Yes. Subject to the conditions in Section 503 of the School-to-Work Opportunities Act, the Secretary of Labor is authorized to waive any requirement under any provision of the Job Training Partnership Act (JTPA), including regulations issued under these provisions. The Department of Education's Waiver Action Board will assist in coordinating with the Department of Labor any waiver requests that involve both JTPA and education requirements.

How do the general waivers under Goals 2000, the ESEA, and School-to-Work relate to waivers under the Goals 2000 Education Flexibility Partnership Demonstration Program (Ed-Flex Program)?

The educational flexibility program is an independent program under which the Secretary may grant up to six SEAs the authority to waive the same Federal statutory and regulatory requirements that the Secretary is authorized to waive under the Goals 2000 general waiver provisions.¹⁰ To be eligible to apply under the Ed-Flex program, an SEA must (1) have developed a State improvement plan under Goals 2000 that is approved by the Secretary; and (2) waive State statutory or regulatory requirements relating to education, while holding LEAs or schools within the State that are affected by the waivers accountable for the performance of their students. By statute, the Secretary will select for participation in the Ed-Flex program three States with a population of 3,500,000 or greater, and three States with a population of less than 3,500,000, as determined by the 1990 decennial census.

Additional information on the Ed-Flex program can be obtained by contacting Tom Fagan on (202) 401-0039.

When may Ed-Flex applications be submitted?

The Department has published in the Federal Register the attached notice inviting applications under the Ed-Flex program. The notice encourages States with approved Goals 2000 plans to submit their Ed-Flex applications as soon as possible. The notice also contains guidance on the criteria that will be used in the selection of the Ed-Flex States.

What waivers may be granted under the charter school provisions of the ESEA?

The Secretary has broad authority to waive requirements applicable to public charter schools funded under Part C of Title X of the ESEA. The Secretary may waive any statutory or regulatory requirement over which he exercises administrative authority except those requirements relating to the elements of a charter school if -- (1) the waiver is requested in an approved application, and (2) the Secretary determines that granting the waiver will promote the purposes of the ESEA charter school provisions.¹¹

¹⁰ See Goals 2000 Section 311(e).

¹¹ See ESEA Section 10304(e).

Are there requirements that may not be waived under the charter school waiver provisions?

Yes. Charter schools must comply with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act. In addition, a charter school must meet all applicable Federal, State, and local health and safety requirements.

**COMPARISON OF WAIVER PROVISIONS IN
THE GOALS 2000: EDUCATE AMERICA ACT,
THE ELEMENTARY AND SECONDARY EDUCATION ACT,
AND THE SCHOOL-TO-WORK OPPORTUNITIES ACT**

	GOALS 2000	ESEA	SCHOOL-TO-WORK
GENERAL COVERAGE OF WAIVERS	Any statutory or regulatory requirement applicable to: ESEA Title I -- Helping Disadvantaged Children Meet High Standards ESEA Title II -- Eisenhower Professional Development ESEA Title IV -- Safe and Drug-Free Schools and Communities ESEA Title VI -- Innovative Education Program Strategies ESEA Title VII, Part C -- Emergency Immigrant Education Perkins ¹	Any statutory or regulatory requirement of the ESEA, except requirements under Title VIII -- Impact Aid	Any statutory or regulatory requirement of: ESEA Title I -- Helping Disadvantaged Children Meet High Standards ESEA Title II -- Eisenhower Professional Development ESEA Title IV -- Safe and Drug-Free Schools and Communities ESEA Title VI -- Innovative Education Program Strategies ESEA VII, Part C -- Emergency Immigrant Education Perkins ²

¹ The recently enacted Improving America's Schools Act of 1994 (P.L. 103-382) contains conforming amendments that were intended to replace the program references in the Goals 2000 legislation with the appropriate references in the reauthorized ESEA. However, in a technical drafting error, certain provisions of the ESEA bill were reorganized after the conforming amendments were drafted, without corresponding changes to the conforming amendments. The references in the chart refer to the programs for which Congress intended waivers to be authorized.

² The conforming amendments for School-to-Work contain the same drafting errors as those for Goals 2000. See note 1 above.

	GOALS 2000	ESEA	SCHOOL-TO-WORK
REQUIREMENTS THAT MAY NOT BE WAIVED	maintenance of effort comparability equitable participation of students and staff in private schools parental participation and involvement distribution of funds to States and LEAs In addition, civil rights requirements and health and safety requirements will not be waived.	maintenance of effort comparability equitable participation of students and teachers in private schools parental participation and involvement distribution of funds to States, LEAs, or other recipients applicable civil rights requirements supplement, not supplant Title X/Part C charter school requirement prohibitions regarding State aid or use of funds for religious worship or instruction	maintenance of effort comparability equitable participation of students in private schools student and parental participation and involvement distribution of funds to States and LEAs public health or safety, labor standards, civil rights, occupational safety or health, environmental protection eligibility of an individual for participation in a program prohibitions or restrictions regarding construction requirement relating to basic purposes or goals of program
WAIVER APPLICANTS	SEA acting in its own behalf SEA on behalf of LEA or school that receives funds under Title III of Goals, if SEA approves waiver request SEA on behalf of LEA or school with reform efforts comparable to Section 306 activities, if SEA approves waiver request	SEA acting in its own behalf LEA, after review by the SEA LEA on behalf of a school, after review by SEA Indian tribe on behalf of schools operated by tribe	State acting in its own behalf State on behalf of local partnership local partnership, if State fails to make determination to submit or not to submit within 30 days of receiving application

	GOALS 2000	ESEA	SCHOOL-TO-WORK
APPLICATION REQUIREMENTS	identify requirements requested to be waived and goals recipient intends to achieve describe action SEA has taken to remove State barriers identified in LEA applications for waivers describe goals of waiver and expected programmatic results describe number and types of students impacted describe timetable for implementation describe process for SEA monitoring, on biannual basis, progress in implementation (see also review criteria in box below)	identify Federal programs affected describe requirements to be waived and how waivers will increase quality of instruction or improve academic performance if applicable, describe which similar State and local requirements will be waived, and how waivers will help achieve stated objectives describe specific, measurable educational improvement goals and expected outcomes for all affected students describe methods to be used to measure progress in meeting goals and outcomes describe how schools will continue to provide assistance to same populations served by programs for which waivers are requested (see also review criteria in box below)	identify specific requirements to be waived describe specific, positive outcomes expected from waiver, and why outcomes cannot be achieved while complying with requirement describe process to be used in monitoring progress in implementing waiver (see also review criteria in box below)

	GOALS 2000	ESEA	SCHOOL-TO-WORK
CRITERIA FOR GRANTING WAIVERS	requirements requested to be waived impede ability to carry out State or local improvement plan SEA has waived, or agrees to waive, similar requirements of State law for statewide waivers, demonstrate that SEA has provided LEAs and parent organization opportunity to comment, and submit LEAs comments to Secretary for LEA waivers, demonstrate that parents, community groups, and advocacy or civil rights groups were provided opportunity to comment underlying purposes of the statutory requirements of each program for which waiver is granted continue to be met	no explicit criteria, but waiver application must meet requirements listed above	requirements sought to be waived impede ability to carry out STW Act State provides documentation of necessity of waiver, meeting application requirements listed above State waives, or agrees to waive, similar requirements of State law State has provided relevant partnerships and LEAs with opportunity to comment on State request State provides, to extent feasible, students, parents, advocacy and civil rights groups, labor and business organizations, opportunity to comment on State request State has submitted comments of partnerships and LEAs to Secretary
DURATION, EXTENSION, AND TERMINATION OF WAIVERS	Up to 4 years May be extended if waiver has been effective in enabling State or affected LEAs to carry out reform plans May be terminated if performance of SEA, LEA, or school affected by waiver is inadequate to justify continuation	Up to 3 years May be extended if waiver has been effective in enabling recipient to carry out activities for which waiver was requested, waiver has contributed to improved student performance, and is in public interest May be terminated if performance of State or other recipient has been inadequate to justify continuation or if it is no longer necessary to achieve original purposes	Up to 5 years May be extended if waiver has been effective in enabling State or partnership to carry out purposes of STW Act May be terminated if performance of State, partnership, or LEA affected by waiver has been inadequate to justify continuation, or if State fails to waive similar requirements of State law as required or agreed to

	GOALS 2000	ESEA	SCHOOL-TO-WORK
PUBLICATION REQUIREMENTS	Notice of decision to grant waivers to be published in Federal Register and widely disseminated	Notice of decision to grant each waiver to be published in Federal Register and widely disseminated	None
REPORTING REQUIREMENTS OF WAIVER RECIPIENT	None	LEA that receives waiver submits a report to SEA at end of second year, and each subsequent year; SEA submits annual report to Secretary based on LEA reports Indian tribe submits annual report to Secretary	None
REPORTS FROM SECRETARY TO CONGRESS	By April 30, 1996, and every two years thereafter, Secretary submits Goals 2000 report that includes information on effect of waivers	Beginning in FY 1997 and in each subsequent year, Secretary submits waiver report to Congress	Not later than 24 months after enactment of Act, and every 12 months thereafter, Secretary submits report on all activities carried out pursuant to Act

Friday
January 20, 1995

Part IV

Department of
Education

Education Flexibility Partnership
Demonstration Program; Notice

DEPARTMENT OF EDUCATION

Education Flexibility Partnership Demonstration Program

AGENCY: Department of Education.

ACTION: Notice inviting applications under the Education Flexibility Partnership Demonstration Program.

SUMMARY: The Secretary invites applications from State educational agencies (SEAs) under the Education Flexibility Partnership Demonstration program (Ed-Flex program), which is authorized by section 311(e) of the Goals 2000: Educate America Act (Pub. L. 103-227) (the Act). To help foster comprehensive education improvement in a State, the Secretary will grant up to six SEAs with approved Goals 2000 State Improvement plans the authority to waive certain Federal statutory or regulatory requirements for the SEA, or for any local educational agency (LEA) or school within the State. SEAs desiring to participate in the Ed-Flex program must submit to the Secretary an application that meets the requirements of Section 311(e) of the Act.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: There is no specific deadline for transmittal of applications.

However, because the Secretary is authorized to grant Ed-Flex status to only a limited number of States, SEAs are encouraged to submit their Ed-Flex applications as soon as possible. The Secretary will review applications as they are received in accordance with the criteria set forth in the Act.

ADDRESSES: Applications should be sent to Richard W. Riley, Secretary, U.S. Department of Education, Education Flexibility Partnership Demonstration Program, 600 Independence Avenue, S.W., Room 6300, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Thomas W. Fagan, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202-2110. Telephone: (202) 401-0039.

SUPPLEMENTARY INFORMATION: The Ed-Flex program is an educational flexibility demonstration program under which the Secretary may grant up to six SEAs the authority to waive certain Federal statutory or regulatory requirements applicable to one or more of the following programs or Acts:

- (1) Title I of the Elementary and Secondary Education Act of 1965 (SEA)—Helping Disadvantaged Children Meet High Standards
- (2) Title II of the ESEA—Eisenhower Professional Development.

(3) Title IV of the ESEA—Safe and Drug-Free Schools and Communities.

(4) Title VI of the ESEA—Innovative Education Program Strategies.

(5) Part C of Title VII of the ESEA—Emergency Immigrant Education.

(6) the Carl D. Perkins Vocational and Applied Technology Education Act.¹

The waiver authority is intended to assist SEAs and affected LEAs and schools in implementing State and local school improvement plans designed to help all children reach challenging academic standards.

To be eligible to apply under the Ed-Flex program, an SEA must serve an "eligible State." Section 311(e)(3) of the Act defines an "eligible State" as one that: (1) Has developed a State improvement plan under Goals 2000 that is approved by the Secretary; and (2) waives State statutory or regulatory requirements relating to education, while holding LEAs or schools within the State that are affected by the waivers accountable for the performance of their students.

The Secretary will select for participation in the Ed-Flex program three States with a population of 3,500,000 or greater, and three States with a population of less than 3,500,000, as determined by the 1990 decennial census. For the purpose of this program, section 3(a)(14) of the Act defines "State" to include the 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia.

Application Requirements and Criteria

I. When May an SEA Submit Its Ed-Flex Application?

An SEA serving an "eligible State" may submit its application at any time. The Secretary is prepared to review Ed-Flex applications as soon as they are received and to grant Ed-Flex waiver authority to an SEA whose application demonstrates a substantial promise of assisting the SEA and affected LEAs and schools in the State in carrying out comprehensive education reform and otherwise meeting the purposes of the Goals 2000: Educate America Act. An

¹ The recently enacted Improving America's Schools Act of 1994 (P.L. 103-382) contains conforming amendments that were intended to replace the program references in the Goals 2000 legislation with the appropriate references in the reauthorized ESEA. However, in a technical drafting error, certain provisions of the ESEA bill were reorganized after the conforming amendments were drafted, without corresponding changes to the conforming amendments. The references above refer to the programs for which Congress intended waivers to be authorized.

SEA that serves an "eligible State" and desires to participate in the program is encouraged to submit its Ed-Flex application as soon as possible because only six applicants may receive the Secretary's delegated waiver authority.

II. What Information Should Be Included in an SEA's Ed-Flex Application?

To be considered for participation in the Ed-Flex program, an SEA must serve an "eligible State" and submit to the Secretary an application demonstrating that the State has adopted an educational flexibility (Ed-Flex) plan that meets the requirements of section 311(e)(4) of the Act. Specifically, the Ed-Flex plan must: (1) Describe the process the SEA will use to evaluate applications from LEAs or schools requesting waivers of Federal statutory or regulatory requirements for covered programs, as well as State statutory or regulatory requirements relating to education; and (2) describe in detail the State statutory and regulatory requirements relating to education that the SEA will waive. An applicant must have the legal authority to grant waivers of the State requirements that it proposes to waive and agree to grant these waivers when it is appropriate to do so.

The Ed-Flex waiver authority is designed to facilitate a State's systemic reform efforts by giving the SEA the authority to waive certain Federal requirements that impede the ability of the SEA, or any LEA or school within the State, from carrying out State or local improvement plans developed under Title III of Goals 2000. Therefore, the Ed-Flex plan should be integrated with the State's improvement plan under Goals 2000. When developing its Ed-Flex plan, an SEA is encouraged to consult with the State panel that developed the State's Goals 2000 State improvement plan. An SEA that obtains approval of a pre-existing plan under section 306(q) of the Act is encouraged to consult with those responsible for developing the pre-existing plan.

III. What Criteria Will Be Used by the Secretary To Evaluate Ed-Flex Applications?

In accordance with section 311(e)(4)(B) of the Act, the Secretary will approve an Ed-Flex application only if he determines that the application demonstrates substantial promise of assisting the SEA and affected LEAs and schools within the State in carrying out comprehensive reform and meeting the purposes of the Act. Section 311(e)(4)(B) also provides that the Secretary will consider the

following criteria in evaluating Ed-Flex partnership applications: (1) The comprehensiveness and quality of the State's Ed-Flex plan; (2) the ability of the plan to ensure accountability for the activities and goals described in the plan; (3) the significance of the State statutory or regulatory requirements relating to education that the State will waive; and (4) the quality of the SEA's process for approving applications for waivers of the covered Federal statutory or regulatory requirements and for monitoring and evaluating the results of the waivers. As stated previously, to be eligible to apply, an SEA must serve an "eligible State"—that is, a State that (1) has developed a State improvement plan under Goals 2000 that is approved by the Secretary; and (2) waives State statutory or regulatory requirements relating to education, while holding LEAs or schools within the State that are affected by the waivers accountable for the performance of their students.

In preparing applications that address these statutory criteria, SEAs are encouraged to examine carefully the following questions:

- Did the SEA conduct effective public hearings or provide other means for broad-based public involvement in the development of the Ed-Flex plan? How has the SEA involved LEAs, schools, parents, community groups, and advocacy and civil rights groups in the development of the plan? Is there widespread commitment within the State for the Ed-Flex plan?
- To what extent would the Ed-Flex plan enhance the State's ability to carry out its Goals 2000 State improvement plan? How would waivers under the Ed-Flex plan reduce or eliminate barriers to the reform of teaching and learning and assist all children in reaching challenging academic standards? Has the State demonstrated that it would extend to LEAs and schools, to the greatest extent possible, the flexibility provided under the Ed-Flex program to help foster local systemic reform efforts?
- What is the likelihood that the SEA's process for granting waivers of Federal requirements to LEAs and schools will assist them in reaching specific, measurable educational goals?
- What State statutory and regulatory requirements relating to education would be waived, and why? What is the relationship between the State and Federal requirements for which the SEA might grant waivers?
- How would the implementation of the Ed-Flex plan facilitate bottom-up reform in LEAs and schools? What LEAs, schools, and student populations would be affected by the Ed-Flex plan?

If some LEAs or schools would not be covered by the Ed-Flex plan, why not? What role would an LEA have in the waiver process if an individual school requests a waiver for the SEA?

- How would the SEA provide LEAs, parent organizations, advocacy or civil rights groups, and other interested parties in the State with notice and an opportunity to comment on proposed waivers of Federal requirements?

- How would the SEA's processes for monitoring LEAs and schools that have been granted waivers under the Ed-Flex authority and for evaluating the results of these waivers ensure that the LEAs and schools will be held accountable for the performance of all students affected by the waivers?

- To what extent do the timelines and benchmarks for implementing the Ed-Flex plan, monitoring LEAs and schools that have been granted waivers, and evaluating the results of the waivers granted provide a reasonable basis for measuring the progress of the SEA in achieving the goals of the Ed-Flex plan?

An SEA is not required to answer specifically each of these questions in its application. Rather, the questions have been provided as guidance to assist SEAs in the preparation of Ed-Flex applications that address the statutory criteria. The Secretary encourages SEAs to consider these issues or any other factors that may demonstrate that the conditions of section 311(e) of the Act have been met. There is not a particular application form that must be completed for this program.

IV. What Federal Statutory and Regulatory Requirements May an Ed-Flex Partnership State Waive?

Section 311(e)(2)(A) of the Act provides that an Ed-Flex Partnership State may waive certain statutory and regulatory requirements applicable to the following programs or Acts:

- (1) Title I of the Elementary and Secondary Education Act of 1965 (ESEA)—Helping Disadvantaged Children Meet High Standards.
- (2) Title II of the ESEA—Eisenhower Professional Development.
- (3) Title IV of the ESEA—Safe and Drug-Free Schools and Communities.
- (4) Title VI of the ESEA—Innovative Education Program Strategies.
- (5) Part C of Title VII of the ESEA—Emergency Immigrant Education.
- (6) the Carl D. Perkins Vocational and Applied Technology Education Act.

The Ed-Flex Partnership State will not be authorized to waive any Federal statutory or regulatory requirement of the above-referenced programs or Acts relating to: (1) Maintenance of effort; (2)

comparability of services; (3) the equitable participation of students and professional staff in private schools; (4) parental participation and involvement; and (5) the distribution of funds to States or to local educational agencies. In addition, Ed-Flex States will not be permitted to waive Federal civil rights requirements or Federal health and safety requirements.

V. What is the Duration of the Ed-Flex Waiver Authority?

The Secretary will approve an SEA's Ed-Flex waiver authority for up to five years. The period may be extended if the SEA's authority to grant waivers has been effective in enabling the State or affected LEAs or schools to carry out their reform plans. In addition, the Secretary may terminate the waiver authority at any time if he determines, after notice and opportunity for hearing, that an SEA's performance has been inadequate to justify the continuation of the waiver authority.

Paperwork Reduction Act of 1980

This notice involves information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the application requirements and selection criteria to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

SEAs are eligible to apply for the waiver authority under this program. The Department needs and uses the information in determining which States will be designated as Ed-Flex Partnership States under this program. The public reporting burden for this collection of information is estimated to average 80 hours per response for approximately 50 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10325, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Dated: January 13, 1995.

Richard W. Riley,

Secretary of Education.

IFR Doc. 95-1418 Filed 1-19-95, 8:45 am

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ATTACHMENT C

U.S. DEPARTMENT OF EDUCATION'S CHARTER SCHOOL DEMONSTRATION PROGRAM

Charter schools represent an important new strategy to promote innovation, parental and community involvement and choice in public education. The Department of Education will soon publish an announcement in the Federal Register for a grant competition awarding start-up funds, and eligibility for broad waivers, to charter schools.

The Administration requested \$15 million for this program in FY 1995, and \$6 million was appropriated by Congress. By law, the first competition will be held for States in which charter schools laws have been enacted; States receiving grants must pass on at least 95% of these funds to fund charter schools. A charter school must apply for funds in partnership with its chartering agency, whether that agency is a school district, or public university, or another public agency. Charter school developers may include teachers, parents, administrators, non-profit organizations, or for-profit firms.

Moreover, a wide array of federal funds -- including Goals 2000 and Improving America's Schools Act (IASA) -- may be used by States and communities to support charter schools. The broad waiver authority in the charter schools law enables the Secretary to provide maximum flexibility in the use of federal program funds -- including Title I of IASA -- for charter schools. The Department intends to take full advantage of this waiver authority to help charter schools tailor the use of federal program resources to those needs.

Both the charter schools application, and guidance on waiver possibilities, will be issued by mid-February. Meanwhile, those interested in learning more about this program should feel free to contact the charter schools program officer, John Fiegel, on (202) 260-2671.

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Divider Title: _____

TAB G

REGULATORY REINVENTION INITIATIVES

SECRETARY CONVENES CABINET AGENCIES THAT AFFECT EDUCATION CUSTOMERS

ED understands that its educational partners are affected as much or more by the regulatory policies and decisions of other federal agencies as by its own education activities. No matter how sensitive ED is to the special needs, circumstances, and responsibilities of the education sector, the federal government's relationship with states, localities, and institutions depends on how all the agencies affect education.

Secretary Riley could convene two different working groups of Cabinet-level agencies whose work affects the postsecondary education and elementary/secondary education sectors. The goals of these efforts will be to increase responsiveness across all agencies to education customers and partners, and to identify concrete ways to coordinate the policies and practices of different agencies to reduce burdens on schools, states, localities, colleges, and universities.

For example, could more consistent definitions and data submissions across agencies minimize schools' reporting headaches?

Is it possible for agencies to coordinate inspection visits or reports?

Indeed, agencies might learn that some requirements are unnecessary, given current state responsibilities or other realities of the education world.

This group could consider changes in compliance activities, regulations, and statutes if they stand in the way of streamlining and burden reduction.

Customer concerns should drive the agenda of the groups. The groups might want to meet regularly with customers or organizations of customers and invite them to join in setting the agenda. On a practical level, they might want to invite community comment on issues and problems for consideration and to establish an internet address for receiving comments and recommendations.

GREATER AND MORE USEFUL CUSTOMER PARTICIPATION IN RULEMAKING

The Department is committing itself to greater and more useful customer participation in ED rulemaking. Rulemaking, when it is determined to be absolutely necessary, is viewed as a continuous process in which customer participation is sought at all stages --- in advance of rulemaking, during rulemaking, and after rulemaking is completed (in anticipation of even further improvements through statutory or regulatory changes).

Solicitation of public perspectives in advance of the publication of notices of proposed rulemaking (NPRMs) through pre-publication meetings around the country is becoming standard procedure in ED. Recently, such discussions were held by ED on bilingual education, special education, student aid, and equity in athletics. The Department has no special ex parte rules that would hamper discussion with customers and the public, and it has not found Federal Advisory Committee Act requirements to be a barrier to successful outreach efforts.

ED plans to expand these outreach efforts through technological means to facilitate even broader awareness of and participation in ED's rulemaking activity. Public comments will be invited through the Internet to help the Department identify candidates for regulatory simplification or elimination.

During the public comment period for all NPRMs, the Department, at the recommendation of its Low Hanging Apples Team, now invites responses through the Internet on all proposed rules. The next step planned by the Department is to allow commenters throughout the country who are interested in a rule under consideration not only to provide their comments to ED via Internet but also to respond to each others' comments, thereby enhancing the information received by the Department. This should enable ED program staff to develop more effective solutions to regulatory dilemmas.

Traditionally, once ED has published a final regulation, it has forgotten about that program rule and its implementation by the Department's customers and moved onto other matters. In the future, ED plans to maintain ongoing dialogues with its customers after the publication of final rule, thereby setting the stage for responding on a timely basis with further regulatory simplification as appropriate.

Greater and More Useful Customer Participation in Rulemaking

Old Way

Notice of Proposed Rulemaking (NPRM)



Final Regulation

New Way

Public Participation
in advance of
rulemaking

Invite public
comments
thru Internet

Negotiated
rulemaking

Identify candidates
regulatory review

Notice of Proposed
Rulemaking (NPRM)

Invite public
comments
thru Internet

Share comments
among commentors
and within ED

Final
Regulation

Solicit candidates for
regulatory review

PAPERWORK REDUCTION PRIORITIES FOR STATES AND LOCALITIES

A recent MacNeil-Lehrer report showed a school official surrounded by an avalanche of papers, described to viewers as the reports the superintendent was required to complete for the federal government. Forget for a moment that this particular superintendent told reporters that many of the papers on his desk had nothing to do with the feds, and the exaggerated wide angle camera shot; the fact remains that schools are frustrated by paperwork requirements from all levels -- federal, state, local and school district -- and that the burden interferes with teachers' ability to spend time with students.

ED has initiated a fast-track project, guided by the Offices of Management, Elementary and Secondary Education, Chief Financial Officer, and General Counsel, charged with reducing the burden of ED paperwork on states and localities. The team's report is due to the Deputy Secretary by April 15.

The action steps are to (1) identify, collect, and inventory the reports, forms, plans, and other materials that states and localities are asked to prepare to participate in ED grant programs; (2) analyze the frequency, scope and repetitive data elements in the reports, forms, plans and other materials; and (3) identify which forms, plans, and reports can be eliminated, combined, or simplified.

Burden-saving options include common cover sheets with basic data for multiple programs; vastly improved sharing of information across ED programs to reduce multiple reports; and replacement of routine reports with simple updates or information verification.

EXPERIMENTAL SITES FOR FEDERAL STUDENT AID PROGRAMS

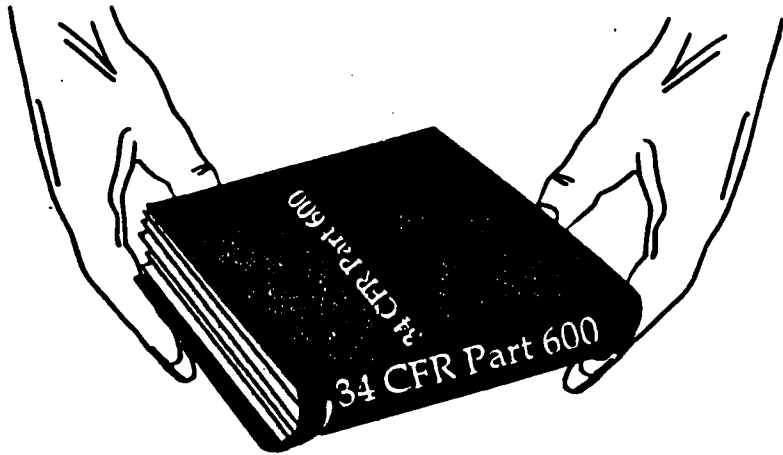
Under HEA Title IV student aid programs, the same standards generally apply to all participating institutions, from national comprehensive universities to cosmetology schools, from institutions that have never had customer (i.e., student or former student) complaints or ED compliance problems to institutions with numerous complaints, errors, or violations. During the past several months, as it has sought to reform Title IV program administration in partnership with the postsecondary education community, ED has been asked repeatedly by the community -- in negotiated rulemaking, in comments on proposed rules, at regional meetings, and in numerous informal discussions -- whether even greater institutional flexibility might be encouraged if it were linked to appropriate performance measures.

Through a notice in the **Federal Register**, the Secretary proposes to invite postsecondary education institutions that administer one or more Title IV programs to submit one or more proposals to ED to participate as "experimental sites" under HEA section 487A(d). This statutory authority permits institutions to participate voluntarily as sites for experimental regulatory and management approaches. For example, this authority could be used to develop experiments under which ED would waive burdensome (but generally necessary) requirements for an institution in exchange for performance measures suited to the institution and to the regulatory objective. An institution approved as an experimental site under this student aid reform initiative would be exempt from agreed upon statutory or regulatory requirements.

The Secretary would establish **no regulatory requirements** for the proposals invited by this notice. The Department hopes that this approach would encourage institutions to develop truly innovative administrative strategies that relieve unnecessary regulatory burden while maintaining program accountability. If these experimental strategies were to prove successful, ED would incorporate them into future Title IV regulations and, if appropriate, legislative proposals.

Experimental Sites

Old Way



ED hands down
comprehensive,
prescriptive
regulations.

New Way

Ideas for improvement
come from the
financial aid
community.



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IMPROVED GATEKEEPING FOR FEDERAL STUDENT AID PROGRAMS

Background:

The Federal government provides funding for loans, grants, and work study programs to help students and their parents finance postsecondary education and training. The Federal government is now spending approximately \$12 billion to provide \$33 billion of student aid. Seventy percent of all student aid is provided by the Federal government.

Students and taxpayers must be protected from waste, fraud, and abuse of Federal student aid funds. Some students have been harmed by low quality and unscrupulous schools that failed to provide effective training or closed suddenly as a result of financial problems. Students may have borrowed money to attend these institutions and are often unable to support themselves or repay their student loans after they graduate.

To ensure quality and protect against fraud and abuse, a "gatekeeping" system, called the "Triad," has evolved over time. Under this system, accrediting agencies, the states, and ED work together to ensure that only quality institutions participate in student financial aid programs. Under the 1992 Amendments to the Higher Education Act (HEA), the Triad operates as follows:

Accrediting Agencies

- Review the academic quality of institutions using a system of peer review.

States

- Provide legal authorization for institutions to operate.
- Review schools that meet statutory requirements designed to identify at-risk institutions.

Dept. of Education

- Certifies that schools have adequate financial and administrative capabilities.
- Reviews institutions to ensure compliance with Title IV requirements.

Impact and Criticism of the 1992 Amendments to the Higher Education Act:

The 1992 Amendments significantly strengthened gatekeeping in response to the problems described above. Increased emphasis on gatekeeping has led to greater integrity in the student aid programs. For example, since fiscal year 1994, ED has made 609 institutions ineligible to participate in these programs because of high loan default rates; the percentage of institutional applications for participation in these Title IV programs that were denied has increased from 16.6 percent in 1990 to 32.8 percent in 1994; and the percentage of institutional applications for reapproval that were denied has increased from 14.7 percent to 22.4 percent for the same period.

The postsecondary education community is critical of the new roles and responsibilities of accrediting agencies and states enacted by the 1992 Amendments, as well as ED's regulations implementing the statute. The community believes that Triad members have overlapping and overly intrusive responsibilities. The community is particularly critical of the role of State Postsecondary Review Entities (SPREs). ED's regulations follow the statute closely, however.

Directions for the Future:

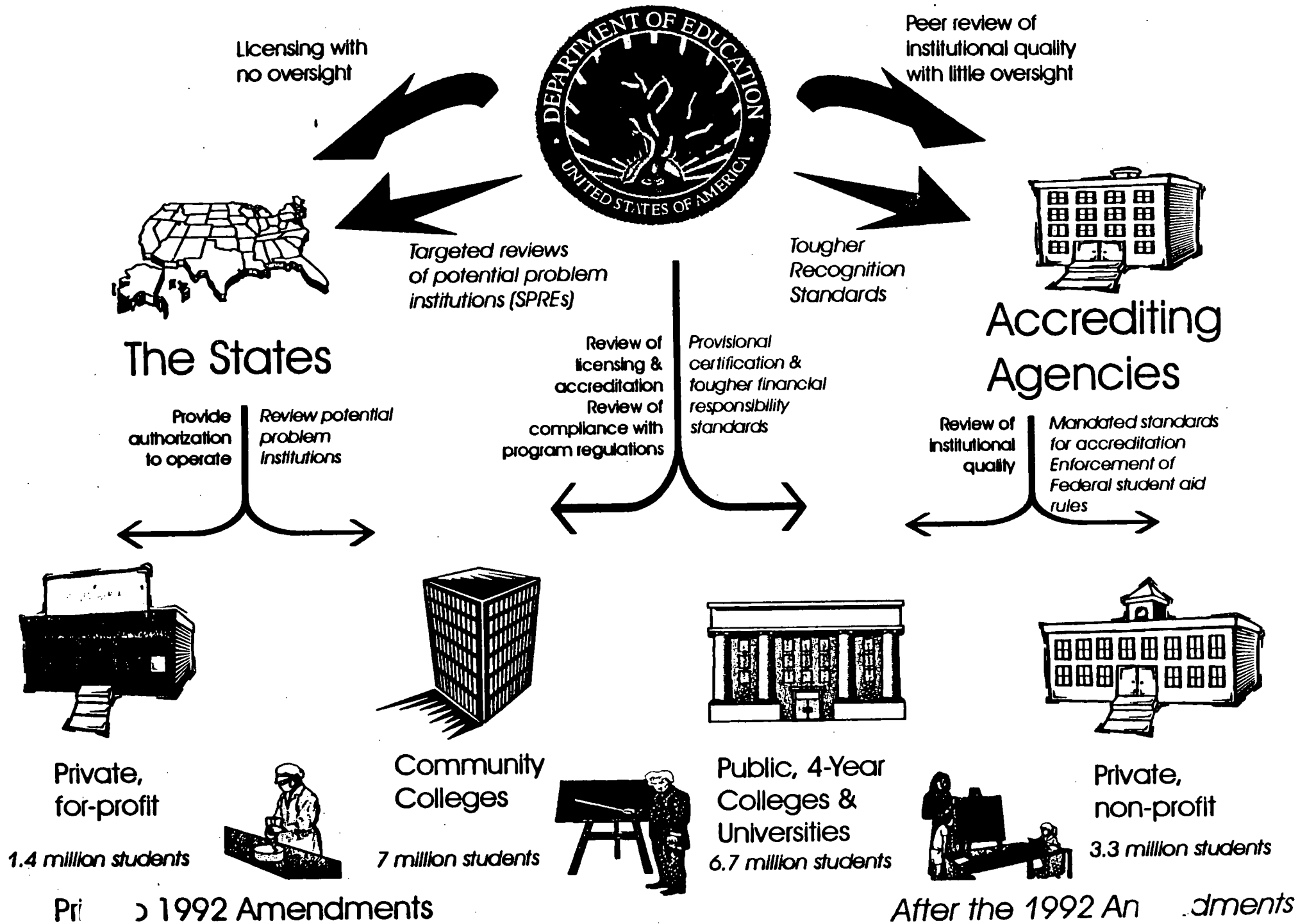
The Department is attentive to institutional concerns and is committed to **reducing burden on institutions and students while balancing the need for strong accountability for Federal funds**. In a speech to introduce President Clinton at the American Council of Education's annual meeting, Secretary Riley announced that ED will work with the community to rethink and revise regulatory and statutory requirements related to gatekeeping. His valentine gift to the community was to eliminate SPRE reviews if self-policing mechanisms were strengthened. To do this would require some statutory change. Within the next two weeks, the Secretary will meet with representatives of the higher education community to discuss how to move ahead in improving the gatekeeping system. We anticipate that these discussions will lead to a legislative proposal in the near future.

When the Secretary made his proposal, he envisioned that accrediting agencies, licensing procedures, and other self-policing mechanisms would need to be strengthened before SPREs would be eliminated in order to maintain balance between accountability of funds and burden reduction. Last week, the House Appropriations Subcommittee proposed to eliminate funding for SPREs for 1995. If SPRE funding is eliminated, SPREs cannot perform reviews and will be eliminated before any other changes can be made. **Accordingly, ED must consider two scenarios, one in which SPREs are funded and one in which SPREs are not funded.**

- If SPREs are funded, ED will consider how to alter their role to reduce burden on schools. ED will consider modifying SPREs by limiting the number of triggers and standards used for reviews and exempting high performing institutions from SPRE reviews.
- If SPREs are not funded, ED must consider the unique roles that are performed by SPREs and determine how to perform those roles within the existing framework. Currently, SPREs are charged with ensuring consumer protection and looking at performance outcomes (graduation and job placement rates) of institutions. These roles could be performed by the ED or by accrediting agencies. Some of these changes could be accomplished by administrative changes at ED and others would require statutory change.

Ensuring that prospective students have sufficient information to make wise choices about their postsecondary education and training is another important component of ensuring integrity in financial aid programs. When informed consumers make better choices, low quality institutions would be driven out of business or would be forced to improve their programs. Information provided to students could include the percentage of students who graduate and the percentage of students who find jobs in the field of study. Schools are already required to provide some of this information (graduation rates) by the Student Right to Know Act, but regulations have not been published due to controversy with the higher education community. In conjunction with the Administration's proposal for the GI Bill for America's Workers, information on nondegree, vocational programs would be available through the One-Stop Career Centers operated by the states. With respect to consumer information requirements, several controversial issues need to be resolved including what information to collect, how to define terms, how to make information available, and which students should have access to information.

Gatekeeping & Oversight of Postsecondary Institutions



"ZERO-BASED" REVIEW OF STUDENT FINANCIAL AID REGULATIONS

The Higher Education Act, as amended (HEA), will be before the Congress for reauthorization in 1997. Whereas the First Morrill Act (1862, as amended through 1991) and the Second Morrill Act (1890, as amended through 1991) together total only 6 pages and the HEA as enacted in 1965 totals only 52 pages, the HEA (as amended) now totals over 600 pages. Correspondingly, the regulations implementing the HEA have grown as well, not only in length but also in complexity.

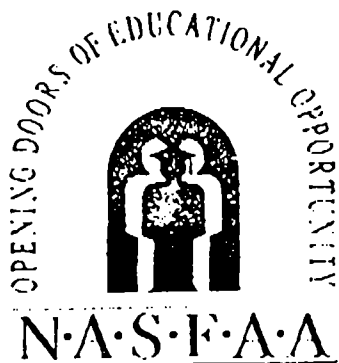
In anticipation of this reauthorization, the Department plans to conduct a "zero-based" review of all current HEA Title IV student financial aid regulations. This process will build upon the selective review of such regulations conducted by intra-departmental teams in ED in fall 1994 prior to the publication of several final student aid program regulations in late November and early December. This fall 1994 regulatory review led to significant burden reduction for postsecondary education institutions and increased flexibility for schools and students. However, numerous opportunities exist for substantially more extensive ED simplification of its postsecondary education program regulations.

The proposed "zero-based" review has two objectives:

- * to "reinvent" the Title IV student aid program regulations in a manner consistent with the new ED principles for regulating; and
- * to identify through this process a range of legislative proposals that could be addressed in the HEA reauthorization.

This review has enormous potential for making the student aid processes easier for millions of families, as well as for the 8,000 or so institutions eligible to participate in the federal student aid programs. It should generate recommendations for improvements not only through statutory and regulatory streamlining but also through new approaches to accomplishing program goals (e.g., expanded responsibility for student aid officers, smarter use of technology, shared data across programs), deletion of program requirements, simplification, and coordination across programs.

This "zero-based" review will be led by ED's Office of Postsecondary Education, in close collaboration with OMB and the Department's Office of the General Counsel, Office of the Chief Financial Officer, Office of the Inspector General, and Office of the Under Secretary.



February 22, 1995

The Honorable Howard P. "Buck" McKeon
U.S. House of Representatives
307 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the National Association of Student Financial Aid Administrators (NASFAA), representing professional student financial aid administrators at over 3,000 postsecondary institutions, we express our concern over provisions of H.R. 450 which would place a moratorium on regulations or proposed regulations issued by the Department of Education between November 20, 1994 and December 31, 1995. Such a ban would preclude a series of final regulations benefiting students and postsecondary institutions from taking effect.

NASFAA believes that there are modifications to the regulatory process that we could support as part of a comprehensive regulatory reform legislative package both to increase public participation in the process and to reduce the increasing regulatory burden faced by our member institutions. However, as it affects postsecondary institutions the moratorium in H.R. 450 moratorium goes too far and prevents several important regulations from taking effect. Approval of this legislative regulation moratorium, for example, would (1) halt regulations from taking effect that simplify for schools the process by which students receive refunds; (2) prevent beneficial changes to the current "cash management" regulations that ensure students receive their Title IV funds in a timely fashion; (3) prevent from taking effect regulations that clarify the circumstances under which schools can appeal cohort default rate calculations due to improper loan servicing; (4) prevent economic hardship deferments from taking effect; (5) stay regulations allowing for an increase in the overaward tolerance for the campus-based programs; and (5) prevent a clarification of verification procedures from going into effect.

These are just a sample of the regulations beneficial to students and schools that would be affected by H.R. 450. These, and other affected regulations, are common sense changes that NASFAA and others in the higher education community support and believe should come into effect as of July 1, 1995, but would not under the provisions of legislation to be considered by the House.

The Honorable Howard P. "Buck" McKeon
February 22, 1995
Page Two

While we desire to see these regulations go into effect and not be affected by the moratorium, we have an additional grave concern. Under the provisions of H.R. 450, the regulation moratorium would stop the Department of Education from issuing new regulations until December 31, 1995 or until passage of H.R. 9, The Job Creation and Wage Enhancement Act whichever is earlier. Currently, the Higher Education Act requires in section 482(c) that all final Title IV regulations be issued prior to December 1 of any given year. Therefore, if H.R. 9 is passed after December 1, 1995, or if it is not passed at all, and the moratorium date expires, then no final regulations could take effect until the following year, e.g. July 1, 1997. In other words, an entire regulatory cycle would be lost, and the Department of Education would be thwarted from issuing new regulations to simplify existing regulations giving relief to schools and students, or to issue new regulations curbing abuse of the system.

Consequently, NASFAA wishes to alert you to the opportunity to clarify, simplify, and correct regulations that would be lost if H.R. 450 becomes law. Further, future regulations of potential benefit to students, schools, and taxpayers would be substantially delayed if this bill becomes law. We strongly urge you to support any common sense amendment that allows these beneficial Title IV regulations to take effect and not hamstringing the Education Department in its efforts to further simplify regulations for schools and protect the American taxpayers' interests. Given our prior calls for regulatory simplicity, we understand that our opposition to this moratorium may appear to be paradoxical. But, at least for financial aid administrators, this blunt legislative approach would currently do more harm than good and potentially bodes ill for current regulatory simplification efforts that are being advanced.

We therefore urge you to reconsider and modify the provisions of H.R. 450, to insure that needed and useful regulatory changes are not halted as a part of any regulatory review. Further, we would be pleased to offer any assistance needed to help you in achieving this goal.

Thank you for your consideration of this important issue.

Sincerely,

Dallas Martin,
President

Eliminate Paper Student Aid Reports (SARs)

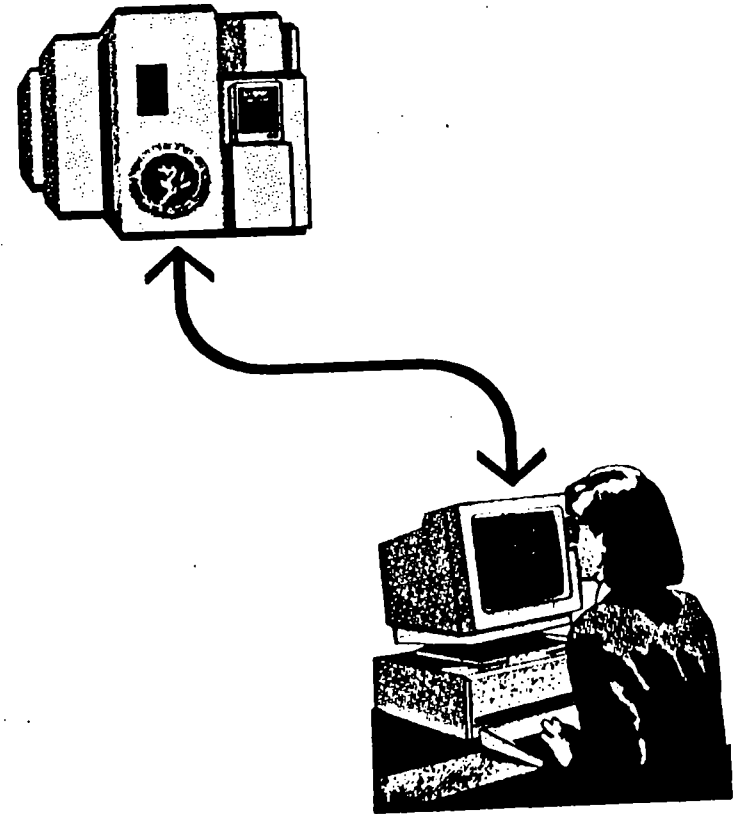
Old Way

**5 million
paper SARs!**



New Way

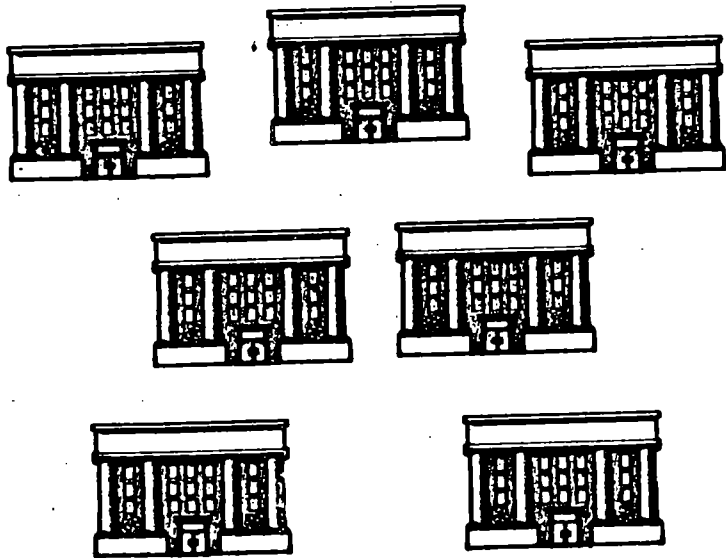
**No more paper
SARs!**



Eliminate Required Cash Reserve to Cover Tuition Refunds

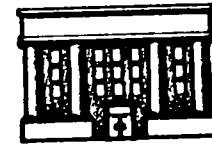
Old Way

**7,300 schools
were required
to have reserve
funds.**



New Way

**Performance-
based criteria
used to identify
schools needing
reserve funds.**



Flexibility 'n Managing Student Accounts

Old Way

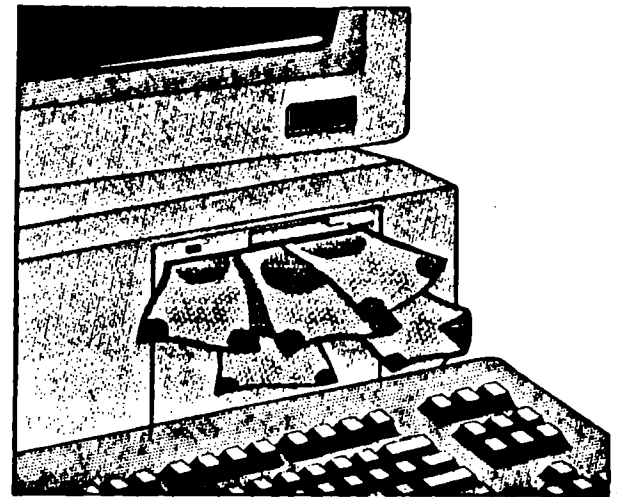
All 7,300 schools
manage accounts
the same way.

No choice!



New Way

Each schools has
choice in managing
student accounts with
enhanced opportunities
to use new technology.



United States Department of Education

Student Financial Assistance Programs

REGULATORY SUMMARY **November/December 1994**

The Department of Education recently published a number of important regulatory packages related to the Federal student aid programs, implementing the Higher Education Amendments of 1992 and the Student Loan Reform Act of 1993. Many of the provisions contained in these packages reduce burden and provide increased simplicity and flexibility for schools and students. Included in the regulatory packages are provisions that:

Eliminate the requirement that all 7,300 schools that participate in the Federal student aid programs establish a cash reserve fund to cover tuition refunds. The Department instead will use performance-based criteria, thus relieving schools with good refund processing histories from the obligation.

Simplify the process by which hundreds of thousands of student aid applicants verify to their schools the information provided on original financial aid applications.

Permit one parent rather than two to sign financial aid application and verification forms.

Allow students and schools flexibility to manage student accounts to help budget funds and to enhance opportunities to use new technologies such as Smart Cards and Electronic Funds Transfer.

Eliminate the requirement for every school to apply for a full institutional recertification if the school adds additional off-campus programs.

Provide flexibility for schools to assist part-time and other non-traditional students in meeting satisfactory academic progress requirements.

Provide that, for affected schools, compliance audits are due six months after the end of the school's fiscal year rather than four months as previously required.

Consistent with partnership initiatives, rely upon states and accrediting agencies to monitor and enforce institutional eligibility requirements that otherwise overlap or are duplicative. For example, states and accrediting agencies, not the Department, would monitor student withdrawal rates.

Simplify the description of the refund process and make other substantive changes, including allowing schools to use shorter periods of time for calculating unpaid charges and reinstating the concept of approved leaves of absence.

Provide schools with flexibility to develop alternative approaches to the requirements for entrance counseling under the Federal Direct Loan Program.

Increase the overaward threshold to \$300 for all three campus-based programs, eliminating the need for schools to make small adjustments to financial aid packages.

Provide flexibility for schools to determine which jobs provide service to the community in meeting the five percent community service expenditure requirement of the Federal Work Study allocation.

Eliminate the requirement that schools actually disburse at least five percent of their funding in the campus-based programs to non-traditional students. Instead, if applicable, institutions are able to meet the statutory requirement by offering the funds to such students. This change will also eliminate certain data collection requirements from the annual Fiscal Operations Report.

Allow a Federal Perkins Loan borrower to elect to repay his or her loan by means of electronic funds transfer from the borrower's bank account and allow institutions to provide a statement of account only once each year.

Reduce burden on schools by expanding the types of media which schools can use to store Federal financial aid information.

IMPLEMENTATION OF CUSTOMER-FRIENDLY DIRECT LOAN PROGRAM

The Administration's fiscal year 1996 budget proposes 100 percent implementation of the Federal Direct Loan Program by academic year 1997-98. In phasing in this program, ED will minimize the burden of Title IV student aid program regulations, consistent with program integrity, institutional accountability, and student benefits. This regulatory review will be incorporated in the Department's "zero-based" review of all student financial aid regulations, but those regulations specifically applying to the Direct Loan Program will be a distinct and separate focus.

The Direct Loan Program has several design characteristics that facilitate this regulatory simplification and burden reduction:

- * The process of obtaining a loan is simpler for student and parent borrowers. They do not submit a separate loan application to a bank. Instead, they complete the Free Application for Federal Student Aid and, upon loan approval, sign a promissory note.

- * Because borrowing is directly from the federal government, direct loans are never sold. Borrowers make a single loan payment to the same (privately-contracted) loan servicer for the life of their loans. For borrowers, it is "one-stop shopping" from loan application to payback.

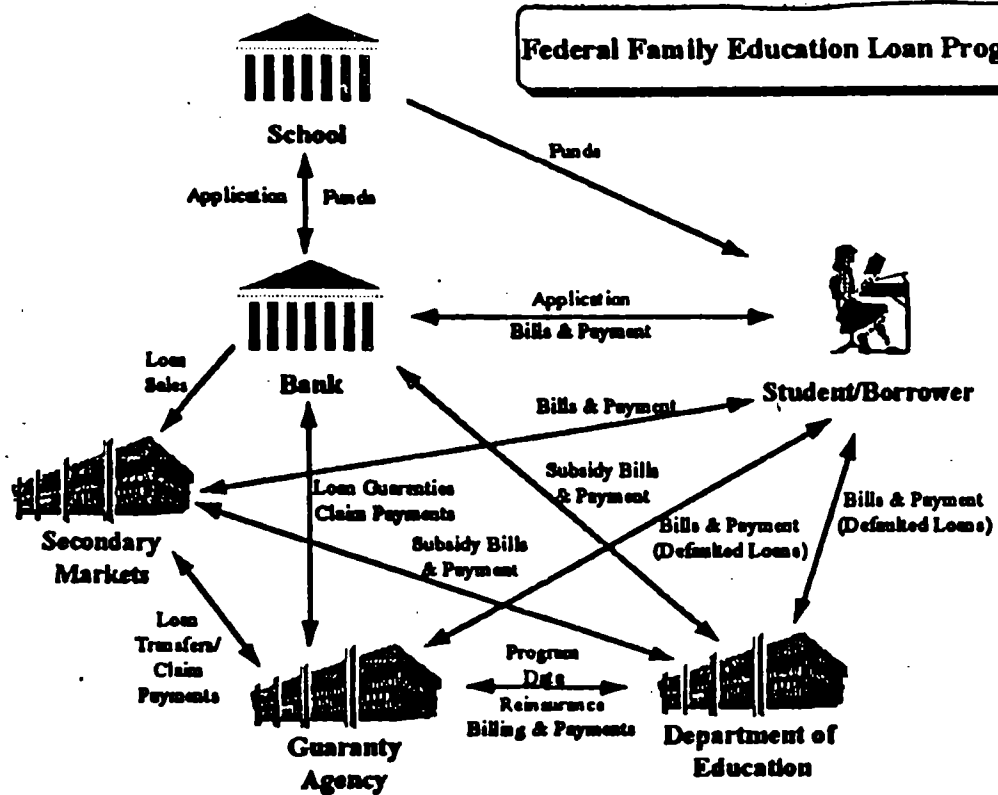
- * Students don't wait in lines to cash bank checks. Schools receive loan funds for students electronically from the federal government and can credit student accounts directly.

- * Students do not borrow from banks. The federal government raises the loan funds through its regular Treasury bill auctions, and the federal government is the recipient of loan repayments. There are no middlemen.

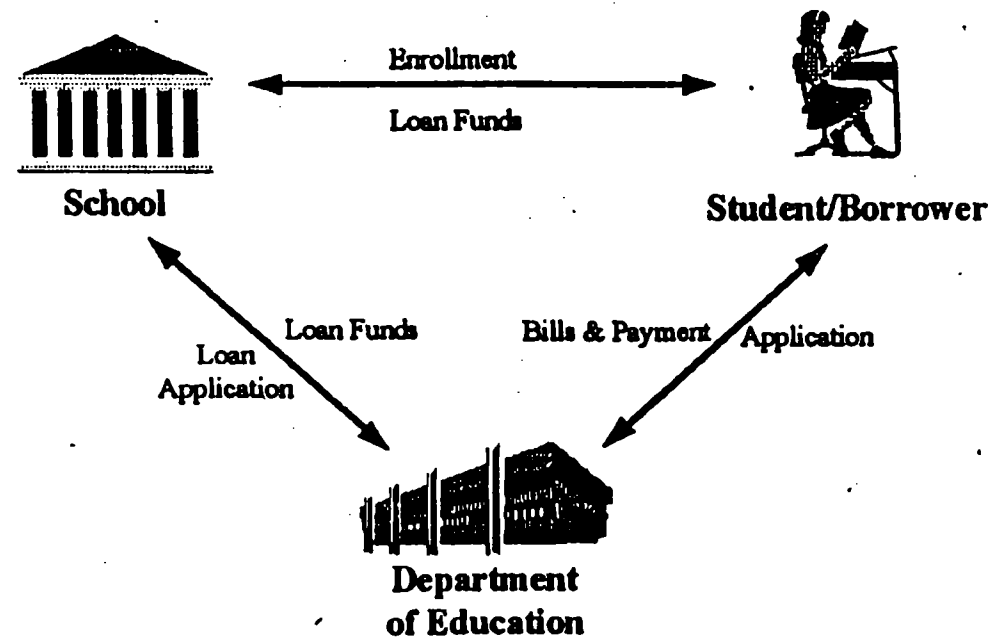
- * Schools do not process loan checks from multiple lenders. Electronic funds transfers from a single source, the federal government, mean less processing time at the school, so there is more time for schools to help students. Schools also experience an improved cash flow.

- * Borrowers have more flexible repayment options with their Direct Loan Program Individual Education Accounts (IEAs). They also can change repayment plans as their financial and personal situation changes.

Federal Family Education Loan Program



Direct Loan Program



MASTER CALENDAR CHANGE FOR FEDERAL STUDENT AID PROGRAMS

With respect to the HEA Title IV student aid programs, ED operates under a statutory "master calendar" provision (section 482(c)) that prohibits regulations published in final form in the **Federal Register** after December 1 of any year from becoming effective until the second award year following publication. (For example, such a regulation published in final form on December 2, 1995, does not become effective until the 1997-98 award year.) This provision of the law is understandable from the perspective of providing postsecondary education institutions enough lead time to implement new student aid regulations. However, the master calendar provision presents the Secretary and these institutions with an unsatisfactory result when both agree that a new ED rule would provide regulatory relief, reduce burden, simplify processes, or otherwise assist students, families, and institutions.

ED proposes to amend the HEA to allow the Secretary to inform schools that they would have the **choice** to implement specific rules finalized after December 1 either immediately, including the possibility of retroactively applying them for the current award year, or for the upcoming award year, and not wait until the second award year as they now would have to do under the master calendar.

A statutory change is required to make this change. If ED sought to implement this master calendar change through regulation or other rulemaking, institutions have indicated they would not be prepared to respond to it for fear they would be held to the prior standard by program reviewers or the Department's Office of the Inspector General. The Congress and other ED constituencies also would view ED as trying to do an end-run around the master calendar rule if a statutory change were not proposed.

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TAB H

BOLD IDEAS:

CREATIVE OR CUTTING ROOM FLOOR
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BOLD IDEAS

I. CREATIVE OR CUTTING ROOM FLOOR?

Institute awards or "grades" for postsecondary institutions, based on performance criteria, that could be used as a competitive edge in advertising

If ED's performance-based categories for establishing regulatory requirements carried an understandable rating or grade, schools could market their status to prospective students as an assurance of good quality, service and management. ED might also partner with the new Malcolm Baldrige awards process for educational institutions to develop and rate performance criteria jointly.

Conduct cost-benefit assessment of whether expensive ED grant application and peer review process leads to useful distinctions among training grant applicants

Some argue that ED spends a great deal of time and money to make minute distinctions among very similar training programs. Might quasi-random distribution of funds among competent applicants save time and money that could better be spent for program purposes?

II. GOOD IDEAS?

Build a network of student resources/advisors/commenters to assure participation by ultimate customers in ED policy making

To develop effective policies, ED needs to know the views of students, its ultimate customers, but students are not well organized to participate in ED policy-making (in contracts to, say, schools and lenders). ED could be the catalyst for increasing participation through technology, development of a student network, or coordination with campus organizations or student leaders (e.g., student members of college governing boards). Risk: Perceived interference with public comment, lobbying or disrespect of existing groups

Challenge two independent teams of "regulation reinventers" to design bold strategies for completely revamping the same regulations designed as high priorities by customers

"Team A/Team B" approach, borrowed from the CIA, would build on natural competitiveness and different creative directions to push for the most imaginative possible solutions for reconciling program purposes and commitment to reinvention.