

CORRECTIONS EDUCATION PROGRAM



A GUIDE TO CHAPTER 2

EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

IN THE

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE ASSISTANT SECRETARY
FOR VOCATIONAL AND ADULT EDUCATION

INTRODUCTION

This document was prepared to increase the Corrections Education field's familiarity with Chapter 2; Education Consolidation Act of 1981. This manual was developed by the Corrections Education Subcommittee in the Office of Elementary and Secondary Education (OESE). Each office in the Department of Education has a subcommittee on Correctional Education. The purpose of these subcommittees is to work with program staff on concerns and issues of a specific nature to each office and to promote communication, support and delivery of educational services in corrections. One of the activities of the subcommittees is to prepare documents describing the programs and services within each office.

Sincere thanks is extended to Dr. Lawrence F. Davenport, Assistant Secretary of Elementary and Secondary Education, for his support and promotion of his office staffs' involvement in correctional education. Mr. James Evans, Special Assistant, should be recognized for his leadership role as chair of the OESE subcommittee. Specific acknowledgement is also extended to Mr. Ron Davis who prepared this document on Chapter 2. Mr. Davis has specific responsibility in this program area. Additional inquiries may be addressed to:

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ACQUISITIONS

REPORT ON CHAPTER 2 FORMULAS

An Occasional Report on Chapter 2 Formulas

MOST STATES WILL HAVE TO CHANGE CHAPTER 2 FORMULAS

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410 Wilde Lake Village Green
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March 1984

A Report on State Chapter 2 Formulas

Background

A new provision in recent amendments to Chapter 2, the education block grant, will probably require at least 32 states to make changes in how they distribute aid to local school districts. Responses from state Chapter 2 Directors to an NCCE survey funded by the Charles Stewart Mott Foundation shows that 32 states are now sending funds set aside for high-cost children to all their districts with any children meeting the state's high-cost criteria. This practice is no longer in accord with the intent of the law. Instead, states are supposed to target their high-cost aid to the districts with the greatest numbers of high-cost children.

The text of the new provision is as follows:

It is the intent of the conferees that section 565(a) of the Education Consolidation and Improvement Act of 1981 be interpreted such that State Chapter 2 distribution formulas provide adjusted allocations to local education agencies (LEAs) with only the greatest numbers or percentages of high-cost children rather than allocations to LEAs with any number or percentage of such children. (Conference Report on H.R. 1035, ECIA Technical Amendments, emphasis added.)

According to NCCE's data, only 17 states now target their high-cost aid to districts with high numbers (or percentages) of needy children. The remainder will have to change how their high-cost aid is distributed. "High-cost" has been most often defined as low-income, limited English-speaking,

gifted and talented, low-achieving, minority, handicapped, or rurally isolated.

Under Chapter 2, approximately \$455 million is divided among the 50 states according to their school-aged population. A state may reserve up to 20 percent of its grant for state-level programs; then it must devise a formula to distribute the remaining 80% to local school districts according to its needs or priorities. The only condition the law has imposed is that the formula must be adjusted to provide more aid to districts "with the greatest numbers or percentages of children whose education imposes a higher than average cost per child." (Sec. 565(a)).

After the law went into effect, the Education Department chose to interpret Section 565 to mean that states did not have to target their high-cost aid to districts with the greatest numbers of high-cost children.

In implementing this provision, an SEA (State Education Agency) has a number of options. It may adjust its formula so that any LEA having 'high-cost' children receives a higher per-pupil allocation than LEAs with no 'high-cost' children. The SEA may also adjust its formula so that not all LEAs having 'high-cost' children receive higher per pupil allocations. Additionally, the SEA may adjust its formula so that all LEAs receive additional funds generated by 'high-cost' children according to the number of such children present in each LEA. Other options may be available. (Non-Regulatory Guidance, Question 47, page 15.)

The technical amendments change that interpretation, and the law, so that states must establish some minimum number or percent of high-cost children for districts to be eligible for "high-cost" aid.

Unless the Education Department writes a new regulation defining "greatest numbers or percentages" (as, for example, above the state average), which observers consider unlikely, the decision where to impose a minimum eligibility requirement will rest with the states.

In designing their formulas, SEAs must consult with a State Advisory Committee representative of parents, the public, and other educational interests. Most SEAs have gone through a two-step process. First, they have decided how much should be set aside for high-cost children versus how much should be distributed on the basis of enrollment. Then, they have determined which high-cost children should be identified for extra aid, how the set-aside should be divided among them, and whether to restrict the aid to districts with concentrations of high-cost children.

The Formulas

The average state has reserved the full 20% for state programs (including SEA staff salaries and expenses), and passed 80% on to local districts. Of the 80% for local aid, 70% was distributed according to school enrollment (public and private) and 30% for high-cost children. Most states (32) did not define their high-cost criteria to eliminate districts with only a few such children; instead the high-cost funds were sent wherever the children were.

Chart 1 shows how the state formulas are split between enrollment and high-cost criteria, and which high-cost criteria the states selected. The first column shows the federal Chapter 2 appropriation to each state. The second column shows the percentage retained by the state for statewide programs. The third column shows how the local distribution formula is divided between enrollment and high-cost children. The remaining columns show the variety of high-cost criteria selected by the states and the percentage set aside for each.

Chart 2 shows the total number of local districts participating in Chapter 2 for each state, and the percentage of local districts receiving high-cost aid under each of the needs selected. For example, Alabama sends out 80% of its local aid according to each school district's enrollment. The other 20% is distributed for low-income and gifted children, and children who live in districts with few resources but high tax rates. On top of their basic allocations, 100% of the districts receive additional aid for gifted children, 19% for low-income children, and 12% because of their low resource base. According to the new amendments, Alabama should change its policy of giving aid for gifted children in all districts to one of restricting it to districts with the highest percentages of gifted children. The other two high-cost criteria, low-income and low tax base, are already defined to target aid to districts with above average need.

CHART I

CHAPTER 2 FORMULA: STATE COMPARISON

3/1/84

State	State Appropriation	State Set-aside	Percentage of Remaining Funds Distributed on Enrollment/Spec. Needs	Low Income	Sparse Population	Tax Effort	Limited English Proficiency	Gifted and Talented	Low/High Achievement	Desegregation	Handicapped	Other
Special Needs Distribution												
AL	\$ 7,633,794	10.0	80%/20%	8.0		2.0		10.0				
AK	2,187,360	20.0	30/70	25.0	25.0						20.0	
AZ	5,098,409	10.0	98/02	*	*				*			
AR	4,373,525	20.0	90/10	10.0								
CA	41,291,513	19.5	42/58	8.5	1.5		5.0			43.0		
CO	5,222,993	20.0	83/17	16.0	1.0							
CT	5,626,052	20.0	21/79	60.0						18.0		1.0
DE	2,187,360	20.0	70/30	10.0				10.0			10.0	
FL	15,925,153	17.5	64/36						36.0			
GA	10,864,740	20.0	50/50	50.0								
HI**	2,187,360	20.0	100/0									
ID	2,187,360	20.0	85/15	10.0	5.0							
IL	21,163,056	20.0	70/30	30.0								
IN	10,582,428	20.0	83/17	15.0	2.0							
IA	5,330,630	20.0	75/25	20.0			5.0					
KS	4,129,341	20.0	88/12	9.0	1.0			.4			1.6	
KY	7,057,931	20.0	84/16	7.0	7.0	2.0						
LA	8,545,996	20.0	85/15	10.0				.6			4.4	
ME	2,187,360	20.0	60/40	40.0								
MD	7,896,681	20.0	80/20	11.5							8.5	
MA	10,173,811	20.0	40/60	60.0								
MI	18,231,652	20.0	58/42		6.0				18.0	18.0		
MN	7,629,692	20.0	82/18	12.0	6.0							
MS	5,283,645	20.0	95/5	*	*						*	*
MO	8,895,073	20.0	78.5/21.5	18.5	3.0							
MT	2,187,360	20.0	71/29	9.0	2.0	18.0						
NE	2,861,216	20.0	75/25	5.0							20.0	
NV	2,187,360	20.0	90/10	10.0	*							
NH	2,187,360	20.0	50/50		*	*					*	
NJ	13,484,913	20.0	30/70	20.0				5.0	25.0	20.0		
NM	2,665,553	20.0	70/30		30.0							
NY	31,340,643	20.0	86.5/13.6		.3		.2		13.0	8.0		
NC	11,047,452	20.0	70/30	30.0								
ND	2,187,360	20.0	87/13	9.0	4.0							
OH	20,354,591	20.0	75/25	13.0	.04	10.0						1.6
OK	5,484,556	20.0	80/20	5.0	10.0						5.0	
OR	4,631,497	20.0	70/30	9.0	.5		2.5	4.0		7.0	7.0	
PA	20,966,546	17.0	60/40	35.0	5.0							
RI	2,187,360	20.0	60/40	23.0			6.0				11.0	
SC	6,203,610	20.0	70/30	30.0								
SD	2,187,360	20.0	90/10		5.0						5.0	
TN	8,578,920	20.0	88/12	12.0								
TX	27,672,974	20.0	73/27	15.0			5				7.0	.02
UT	3,088,956	20.0	77/23		*						*	*
VT	2,187,360	20.0	60/40	16.0	9.0	15.0						
VA	9,824,822	20.0	65/35	18.0					17.0			
WA	7,348,289	20.0	50/50	15.0			5.0	10.0		20.0		
WV	3,652,769	20.0	90/10	5.0							5.0	
WI	8,919,131	20.0	50/50	50.0								
WY	2,187,360	20.0	59/41	3.0	2.0	35.0		8.0				

* Distribution based on a weighted per-pupil formula that takes into account the high cost of educating special needs children.

** Hawaii has only one school district.

CHART II

CHAPTER 2 FORMULAS: SPECIAL NEEDS TARGETING

3/1/84

State	Enrollment/Special Need Split	Total # LEAs Participating	Low-Income	Sparse Population	Tax Effort	Limited English	Gifted and Talented	Low Achievement	Desegregation	Handicapped	Other
Percentage of LEAs Receiving Funds for High-Cost Children											
AL	80/20	128	19%		12%		100%				
AK ¹	30/70	52	96%	79%						96%	
AZ	98/02	162	100%	65%			100%	100%			
AR	90/10	370	55%								
CA	42/58	1050	48%	57%		40%			3%		
CO	83/17	181	75%	50%							
CT	21/79	165	25%						2%		2%
DE	70/30	19	90%				90%			90%	
FL	64/36	67						100%			
GA	50/50	189	100%								
HI	100/0	1									
ID	85/15	118	100%	43%							
IL	70/30	1004	99%								
IN	83/17	305	24%	31%							
IA	75/25	442	39%			38%					
KS	88/12	319	98%	13%			99%			99%	
KY	84/16	183	29%	34%	5%						
LA	85/15	73	97%				97%			97%	
ME	60/40	283	99%								
MD	80/20	24	100%							100%	
MA	40/60	365	99%								
MI	58/42	573		61%				11%	2%		
MN	82/18	436	99%	53%							25%
MS	95/5	157	20%	20%						20%	20%
MO	78.5/21.5	554	33%	11%							
MT ¹	71/29	554	21%	54%	14%						
NE ¹	75/25	1043	31%							71%	
NV	90/10	17	94%	*							
NH	50/50	158		*	*						
NJ	30/70	597	26%				81%	98%	12%		
NM	70/30	89		94%							
NY	86.5/13.6	711		20%		19%		99%	.01%		8%
NC	70/30	150	95%								
ND	87/13	297	74%	60%							
OH	75/25	759	20%	1%	10%						12%
OK	80/20	570	100%	100%						100%	
OR	70/30	313	92%	21%		27%	28%		.1%	85%	
PA	60/40	504	99%	30%							
RI	60/40	46	22%			24%				28%	
SC	70/30	99	62%								
SD	90/10	195		7%						100%	
TN	88/12	151	100%								
TX	73/27	1004	98%			*				*	*
UT	77/23	40		65%						100%	100%
VT	60/40	251	39%	35%	35%						
VA	65/35	139	59%					48%			
WA	50/50	300	99%			38%	98%		1%		96%
WV	90/10	58	100%							100%	
WI	50/50	432	99%								61%
WY	59/41	27	100%	67%	44%		33%				

¹ Estimates; not official figures

* Factor formulas using an adjustment; data not available on # LEAs.

States That Targeted Aid

The seventeen states that send aid for high-cost children only to districts with greater numbers or percentages of such children have widely varying formulas. The Chart below describes briefly their high-cost criteria. The first column shows the percent of aid available to local districts that was set aside for each high-cost factor, the third column gives the percentage of districts that receive the funds. In deciding the level at which a district's eligibility begins, most of these states used state averages as a starting point. At least five, for example, sent their low-income aid only to districts with above the state average of children in the Title I program.

STATES THAT TARGET ALL AID TO HIGH-COST CHILDREN (N=17)

<u>State</u>	<u>% Set Aside</u>	<u>Eligibility Criteria</u>	<u>% LEAs Aided</u>
AR	10%	LEAs with Lowest Resources	55%
CA	43	LEAs with desegregation plans	3
	1.5	Small LEAs (\$2500 floor)	57
	8.5	LEAs with above-average # AFDC children	48
	5	LEAs with limited English-speaking population	40
CO	1	Small or rural LEAs	50
	16	LEAs with > 15% low-income children	75
CT	60.2	LEAs with high concentration of AFDC children	25
	18.2	Children in magnet schools	2
IN	15	LEAs with > 15% children in free-lunch program	
	2	LEAs with \leq 12 students per square mile	31
IA	20	LEAs with > average # Title I children	39
	5	LEAs with minority language children	38
KY	7	LEAs with > average Title I children	29
	7	LEAs with \leq 6 students per square mile	34
	2	LEAs with > average tax effort, < average PPE	5
MI	18	LEAs with below average scores on MEAP	11
	18	LEAs with desegregation plans	2
	6	LEAs with < 31.5 students per square mile	61

States That Target All Aid to High-cost Children (continued)

<u>State</u>	<u>% Set Aside</u>	<u>Eligibility Criteria</u>	<u>% LEAs Aided</u>
MS	5	LEAs with highest % of high-cost students (based on state equalization formulas)	20
MO	3	LEAs with < 350 students	33
	18.5	LEAs with > 10% AFDC children	11
MT	9	LEAs with > 10 Title I children	21
	2	LEAs with < 100 Students	54
	18	LEAs with high tax effort, low PPE (sliding scale)	14
ND	9	LEAs with > 10 Title I children	74
	4	LEAs with ≤ 1 student per square mile	60
OH	10.9	LEAs with tax rate 10% > average, < average/revenue/child	10
	13.65	LEAs with > average # Title I children	20
	.03	LEAs with ≤ 100 students	1
	1.55	Children in special schools	12
RI	23	LEAs in top $\frac{1}{2}$ AFDC Children	22
	11	LEAs in top $\frac{1}{2}$ handicapped children	28
	6	LEAs in top $\frac{1}{2}$ limited English speaking children	24
SC	30	LEAs with $\geq 30.2\%$ (or 2250) Title I children	62
VT	15	LEAs with > average tax rate, < average PPE	35
	16	LEAs with $\geq 20\%$ (or 100) low-income children	39
	9	LEAs with small schools	35
VA	17.9	LEAs with $\geq 21\%$ Title I children	59
	17.3	LEAs with $\geq 25\%$ scoring below grade level	48

States That Did Not Target Aid

The 32 states that do not target their high-cost set-asides fall into two categories: those that target aid for some, but not all (N=17); and those that do not target any aid (N=15). Several high-cost criteria, by definition or happenstance, automatically exclude some LEAs: sparsity (small, isolated districts), tax effort (LEAs with above-average tax rates and below average per-pupil expenditures (PPE)), limited English proficiency (or minority language children), and desegregation (LEAs with approved plans or magnet schools). There are several

states that target only for sparsity (AZ, AK, ID, KS, PA, SD, and UT). The charts below describe all the non-targeting states' formulas.

STATES THAT NEED TO CHANGE THEIR FORMULAS

A. States that Target Aid for Some High-Cost Children (N=17)

State	% Set Aside	Eligibility Criteria	% LEAs Aided
*AZ ¹	2	Title I-eligible children	100
		Low and High Achieving Children	100
		LEAs with <500 students	65
AL	2	LEAs with >average tax rate;<average PPE	12
	8	LEAs with >average Title I students	19
	10	Children scoring >85% on CAT	100
*AK	24.5	Title I-eligible children	96
	20	Handicapped children	96
	26	Small LEAs (sliding scale)	79
*ID	10	Children in free/reduced price lunch program	100
	5	LEAs with <600 students	43
*KS	9	Title I children	98
	1	LEAs with ≤.75 students per square mile	13
	1.6	Handicapped children	100
	.4	Gifted children	100
MN	6	Title I children	99
	6	LEAs in economically depressed areas	25
	6	LEAs with ≤5 schools per square mile	53
NJ	20	LEAs with economic need	26
	25	Children needing Basic Skills Remediation	98
	5	Gifted Children	81
	20	Children in desegregating schools	12
NY	8.2	Children with special education needs	99
	4.9	LEAs with >30% special needs children	8
	.2	Children with limited English	19
	.3	Small LEAs (sliding scale)	20
	8	Children in magnet schools	77 ² .01
NE	20	Handicapped children	31
	5	Title I children	92
OR	9.4	Title I students	21
	.4	Small, sparsely settled LEAs	85
	6.8	Handicapped Children	.1
	6.9	LEAs with desegregation plans	27
	2.6	Children in limited English programs	28
	3.9	Children in Gifted programs	

States that Target Aid for Some High-Cost Children (N=17) (continued)

<u>State</u>	<u>% Set Aside</u>	<u>Eligibility Criteria</u>	<u>% LEAs Funded</u>
*PA	35	Children from AFDC families	99
	5	Small LEAs (sliding scale)	30
*SD	5	Handicapped children	100
	5	Small, sparsely settled LEAs	7
TX ¹	14.5	Title I students	99
	.02	Neglected and delinquent children in institutions	NA
	5.1	Children with limited English	40
	7.7	Handicapped children	99
*UT	1.3	Small LEAs	65
	8.6	Handicapped children	100
	.5	Youth in custody	100
	3	Vocational education students	100
	6.8	LEA professional staff costs	100
	3	Students in special-purpose programs	100
WA	15	Title I students	99
	10	Minority population	96
	10	Gifted children (3% LEA enrollment)	98
	10	Racial isolation	1
	5	Children with limited English	38
WI	25	Title I students	61
	25	Low-income children (census data)	99
WY	35	LEAs with > average tax rate; < average PPE	44
	3	Title I students	100
	2	Small, isolated schools	67
	1	LEAs with \geq 5% gifted children	33

¹ These figures are not official, but based on estimates.

² Unofficial estimates. Nebraska has 1043 school districts; some are so small they have no needy children.

* States targeting only for sparsity.

B. States that Do Not Target High-Cost Aid (90% or more of all LEAs receive all high-cost aid) (N=15)

<u>State</u>	<u>% Set Aside</u>	<u>Eligibility Criteria</u>	<u>% LEAs Funded</u>
DE	10	Children from AFDC Families	90
	10	Handicapped children	90
	10	Gifted children (scoring 98th percentile)	90
FL	36	Children scoring $\leq 25\%$ state test	100
GA	50	Low income children (AFDC/reduced and free lunch)	100
IL	30	Title I children	99
LA	4.4	Handicapped children	97
	10	Title I eligible children	97
	.6	Gifted children	97
MA	60	Children from AFDC families	99
MD	11.5	Title I-eligible children	100
		Handicapped children	100
ME	40	Title I-eligible children	99
NV	10	Title I and AFDC children, adjusted for sparsity and tax effort (\$3000 floor)	94
NH	50	Handicapped children, tax resource base, low/high density population (1 factor)	100
NM	30	Small, isolated LEAs (sliding scale; \$3,000 floor)	94
NC	30	Children in free lunch program	95
OK	5	Title I children	100
	5	Handicapped children	100
	5	Small LEAs (sliding scale)	100
	5	Sparsely settled LEAs (sliding scale)	NA
TN	12	Children below poverty level (census)	100
WV	5	Handicapped children	100
	5	Title I children	100

(Hawaii has only one school district; therefore, it is not required to target aid.)

High-Cost Set-Asides and Targeting

In considering how to direct aid for high-cost children there is another major variable that needs to be taken into account, and that the new provision in the technical amendments did not address: how much aid is set aside for high-cost children in the first

place. One way to look at this is to compare the amount per high-cost child districts in different states receive. What we find is that a state targeting its high-cost aid may not be delivering a greater amount per needy child than a state sending the aid to all its districts. Massachusetts allots \$32.00 for a low-income child to 99% of its LEAs; Ohio allots \$11.20 for a low-income child to 20% of its LEAs. The difference is that Massachusetts set aside 60% of its local aid for low-income children, while Ohio set aside only 13%.

Let's look at all the states selecting low-income children as "high-cost," comparing those that target aid with those that do not.

	<u>Av. % Set Aside</u>	<u>Av. Amount per Low-income child</u>	<u>Av. % LEAs Funded</u>
Targeting States (N=17)	18%	\$9.71	40%
Non-Targeting States (N=26)	20%	\$11.10	98%

In the aggregate, there is not a great deal of difference in the help a district gets for a poor child.*

The same pattern is evident in aid for gifted and talented children.

	<u>Av. % Set Aside</u>	<u>Av. Amount per Gifted Child</u>	<u>Av. % LEAs Funded</u>
Targeting States (N=3)	3.3%	\$10.66	47%
Non-Targeting States (N=5)	6.2%	12.57	97%

*See Appendices I & II for per/pupil allotments by all high-cost categories.

What this means is that states have to make trade-offs when they design Chapter 2 formulas. The pressure is stronger to spread the aid out than to target it toward need. This is obvious from the average formula split of 70% for enrollment, 30% for high-cost children, and from the fact that 65% of the states do not target the high-cost aid they have set aside toward districts needing it the most. The minutes of the Massachusetts Chapter 2 State Advisory Committee make this point well; the members decided that if they were to reserve 60% of local aid for Title I children, they had better send it to all the districts.

Congress may well have intended that more Chapter 2 funds should be helping needy children than is presently the practice, but the new provision will not necessarily have that effect. Since states are still free to decide how much to allocate for high-cost children, they may opt to set less aside if high-cost funds cannot be sent to all districts. NCCE plans to continue gathering data on state formulas and will issue another report after SACs have met in the coming year.

Other Issues

This paper does not consider a number of other, related issues, such as the tremendous disparities among per-pupil allotments for high-cost children (see Appendices I & II), the problems of rural school districts with small numbers but high percentages of needy children, or the effects of varying definitions of need (Title I vs. AFDC vs. low-income census, for

example). These will be treated later. NCCE would appreciate suggestions on how to treat, quantify, or present the data, and corrections of our information if it is inaccurate.

APPENDIX I

STATE CHAPTER 2 FORMULAS: AMOUNT PER HIGH-COST CHILD

State	Amount for Local Education Agencies	Amount per Enrolled Child	Low Income	Sparse Population	Tax Effort	Limited English Proficiency	Gifted and Talented	Low/High Achievement	Desegregation	Handicapped	Other
Amount Allocated per High-Cost Child											
AL	\$6,870,415	\$ 7.01	\$ 2.78		\$2.65		\$6.28				
AK	1,749,888	5.96	32.58	24.94						34.48	
AZ ¹	4,588,568	8.60	*	*				*			
AR	3,498,820	7.05	1.76								
CA	33,239,667	3.07	6.14	2.07		6.14			10.50		
CO	4,178,394	6.13	14.23	3.66							
CT	4,500,842	2.67	9.80						460.00		12.31
DE	1,749,888	10.32	17.91				26.81				
FL	13,138,251	NA						NA			
GA	8,691,792	3.79	18.33								
HI	1,749,888	6.74									
ID	1,749,888	7.01	4.83	6.81							
IL	16,930,444	5.80	14.45								
IN	8,465,942	6.30	11.33	1.32							
IA	4,264,504	5.64	9.93			51.21					
KS	3,303,473	6.85	3.41	1.60			1.35			1.09	
KY	5,646,344	6.57	4.38	4.38	4.38						
LA	6,836,797	6.25	2.18				4.12			4.12	
ME	1,749,888	4.52	18.36								
MD	6,317,345	5.96	5.90							5.57	
MA	8,139,049	2.88	32.00								
MI	14,585,321	4.37		4.37				4.37	4.37		
MN	1,525,938	6.15	2.84	2.39							1.36
MS	1,056,729	7.60	*	*						*	3.10
MO	7,116,058	6.86	6.86	6.86							
MT	1,749,888	8.06	16.12	4.03	8.06						
NE ¹	2,288,973	5.41	4.57							14.06	
NV	1,749,888	10.02	10.02	*							
NH	1,749,888	4.78		*	*					*	9.94
NJ	10,787,930	2.26	4.74				11.92	5.89	15.07		
NM	2,132,442	6.22		*							
NY	25,072,514	NA		*		*		*	60.64		*
NC	8,837,962	5.46	8.24								
ND	1,749,888	11.89	13.00	26.00							
OH	16,283,672	5.61	11.20	55.99	8.40						16.80
OK	4,387,645	6.00	2.96	2.54						5.23	
OR	3,705,198	5.41	6.10	6.10		6.10	6.10		6.10	6.10	
PA	17,402,233	4.52	20.31	2.92							
RI	1,749,888	6.03	21.95			21.95				21.95	
SC	4,962,888	5.05	8.43								
SD	1,749,888	11.39		5.15						7.36	
TN	6,863,136	6.56	6.56								
TX	22,138,379	5.06	5.06			5.06				5.06	5.06
UT	2,471,165	5.31		*						*	*
VT	1,749,888	9.94	24.15	24.15	7.16						
VA	7,859,858	4.92	4.92					4.92			
WA	5,878,631	3.64	4.38			15.23	24.30		24.47		
WV	2,922,215	5.95	3.73							3.54	
WI	7,135,305	3.81	17.32								375.00
WY	1,749,888	13.97	13.97	13.97	13.97		13.97				

¹Unofficial estimates.

*Factor formula data not available.

APPENDIX II

TYPES OF HIGH-COST WEIGHTINGS USED IN STATE CHAPTER 2 FORMULAS

Definitions of High-Cost	Number of States Using	Average Percentage Set Aside	Number of States Targeting	Average Amount Per Pupil	Per-Pupil Range	Average % LEAs Funded
Low-Income	42	19.1%	17	\$10.79	\$1.76-\$32.58	75
• AFDC/Title I Count (AK, AZ, DE, IL, KS, LA, MA, MD, ME, MN, NE, NV, OR, PA, TX, WV, WA, WI, OK, WY, MT)	21	18.4%	0	11.49		98
• Other Low-Income Counts (Free lunch, census, comb.) TN, ID, NC, MS, GA	5	25.5%	0	9.49		99
• Minimum Low-Income Count (AL, CA, CT, CO, IN, IA, KY, MO, ND, NJ, OH, RI, SC, VA, VT, AR)	16	18.3%	17	9.72		40
Sparsity/Rural Isolation	26	6.0%	26	10.82	\$1.32-\$55.99	45
• Floor Formulas (Guarantee minimum grant) AK (\$5,000), CA (\$2,500), NM (\$3,000), NV (\$3,000)	4	18.8%	4	13.50		77
• Small Size, Sparse Settlement (ID, IN, KS, MI, MN, MO, MT, OH, ND, OK, OR, CO, PA, SD, WY, VT, KY)	17	4.0%	17	10.50		28
• Small Size Adjustment Factor (AZ, MS, NV, NH, NY, UT)	6	NA	NA	NA		NA
Tax Effort	6	13.7%	6	7.44	\$2.65-\$13.97	20
• Above Average Tax Rate, Below Average Per-Pupil Expenditure (AL, KY, MT, OH, VT, WY)	6	13.7%	6	7.44		20

--Continued

APPENDIX II--Cont.

TYPES OF HIGH-COST WEIGHTINGS USED IN STATE CHAPTER 2 FORMULAS

Definitions of High Cost	Number of States Using	Average Percentage Set Aside	Number of States Targeting	Average Amount Per Pupil	Per-Pupil Range	Average % LEAs Funded
Low Achievement	6	24.0%	3	NA	NA	71
• Low Test Scores AZ, FL, NJ, NY	4	25.0%	3	NA	NA	99
• Concentrations of Low Achievers MI, VA, (NY)	2	18.0%	2	NA	NA	30
Limited English-Speaking	7	4.0%	7	17.62	\$5.06-\$51.21	31
• State Census or LEA Data CA, IA, NY, OR, TX, WA	7	4.0%	7	17.62		31
Gifted and Talented	8	5.1%	3	11.86	\$1.35-\$26.81	78.2
• LEAs with High G/T Enrollment (including special programs for gifted/talented) NJ, OR, WY	3	3.3%	3	10.66		47.3
• Children Identified as G/T AL, DE, KS, LA, WA	5	6.2%	0	12.57		96.8
Desegregation Efforts	7	19.1%	7	83.02	\$4.37-\$460.24	2.9
• LEAs with Desegregation Programs CA, MI, NJ, OR, WA	5	21.6%	5	12.10		3.6
• Children Enrolled in Magnet Schools (CT, NY)	2	13.0%	2	260.32		1.0
Handicapped	15	8.7%	1	10.92	\$3.54-\$34.48	90.1
• LEA Count of Handicapped AK, DE, KS, MD, NE, OK, LA, OR, SD, TX, WV	11	8.7%	0	8.84		94.9
• Concentration of Handicapped RI	1	11.0%	1	21.95		28.0
• Handicapped Adjustment Factor MS, NH, UT	3	NA	0	NA		NA

NONREGULATORY GUIDANCE FOR CHAPTERS 1 AND 2 (ECIA)



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

JUL 26 1983

MEMORANDUM TO CHIEF STATE SCHOOL OFFICERS

SUBJECT: Nonregulatory Guidance for Chapters 1 and 2 (ECIA)

The final regulations under Chapters 1 and 2 of the Education Consolidation and Improvement Act of 1981 (ECIA) were designed to reduce regulatory burden while increasing State and local flexibility. As a result, the final regulations did not prescribe specific methods for implementing each of the program requirements.

Many State and local officials, however, requested further guidance regarding the implementation of the Chapter 1 and Chapter 2 programs. To respond to these requests and to provide uniform guidance, the Department prepared and distributed prior to the 1982-83 school year draft nonregulatory guidance documents containing suggested guidelines for Chapter 1 programs operated by local educational agencies and suggested guidelines for the State-administered programs under Chapter 2. These documents have now been revised in light of the final regulations as well as suggestions from readers and are being distributed by the Department in accordance with Section 591(b) of the ECIA.

I anticipate these documents will be updated periodically and expanded as necessary to respond to questions you and other education officials may ask regarding program implementation. We believe this method of providing uniform answers to frequently asked questions will prevent confusion that educators may face because of unclear or conflicting opinions. Accordingly, in response to requests for guidance, information provided by program staff that is not found in the statute, the regulations, or the nonregulatory guidance documents should be considered as the individual's opinion only and should not be construed as representing the position of the Department.

In sharing with you copies of the current nonregulatory guidance documents for Chapters 1 and 2, I wish to emphasize again that they do not impose binding requirements on State and local educational agencies. Those agencies are encouraged to develop alternative approaches that are consistent with the statute, regulations, and legislative history but may be more in keeping with particular needs and circumstances.

I hope that these documents will be of use to you in the administration of the Chapter 1 and Chapter 2 programs.


T. H. Bell

FISCAL YEAR 1985 APPROPRIATION
FOR DISTRIBUTION IN 1985-86

ECIA Chapter 2 State Block Grants
Fiscal Year 1985 Appropriation for
Distribution in 1985-86 1/

State or Outlying Area	FY 1985 Allotment	State or Outlying Area	FY 1985 Allotment
TOTAL		\$500,000,000	
Alabama	8,584,934	New Mexico	3,148,509
Alaska	2,473,405	New York	34,213,795
Arizona	6,139,592	North Carolina	12,457,599
Arkansas	4,974,644	North Dakota	2,473,405
California	48,014,758	Ohio	22,186,491
Colorado	6,223,552	Oklahoma	6,779,789
Connecticut	5,982,167	Oregon	5,268,505
Delaware	2,473,405	Pennsylvania	22,784,708
Florida	18,765,112	Rhode Island	2,473,405
Georgia	12,436,609	South Carolina	7,094,640
Hawaii	2,473,405	South Dakota	2,473,405
Idaho	2,473,405	Tennessee	9,644,932
Illinois	23,351,440	Texas	34,234,785
Indiana	11,628,492	Utah	4,208,507
Iowa	5,919,196	Vermont	2,473,405
Kansas	4,733,258	Virginia	10,956,810
Kentucky	7,955,232	Washington	8,500,973
Louisiana	10,033,248	West Virginia	4,187,517
Maine	2,473,405	Wisconsin	9,749,882
Maryland	8,385,528	Wyoming	2,473,405
Massachusetts	10,746,910	District of Columbia	2,473,405
Michigan	19,352,833	Puerto Rico	9,239,267
Minnesota	8,385,528		
Mississippi	6,045,137		
Missouri	9,854,832		
Montana	2,473,405	American Samoa	483,834
Nebraska	3,263,954	Northern Marianas	243,058
Nevada	2,473,405	Guam	1,368,799
New Hampshire	2,473,405	Trust Territory	1,833,086
New Jersey	14,619,575	Virgin Islands	1,390,313

1/ One percent of the total appropriation for Chapter 2 is reserved for the Outlying Areas. An additional amount of up to six percent is reserved for the Secretary's Discretionary Funds. The remainder is distributed to the 50 States, D.C., and Puerto Rico on the basis of the aged 5-17 population. No State receives less than 0.5 percent of the remainder. Source of aged 5-17 population--U.S. Department of Commerce, Bureau of the Census: (1) 50 States and D.C., revised estimates of resident population (7/83); (2) Puerto Rico and Outlying Areas, 1980 Census.

CHAPTER 2

EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

NONREGULATORY GUIDANCE FOR STATE AND LOCAL EDUCATIONAL AGENCIES IMPLEMENTING CHAPTER 2 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

The nonregulatory guidance in this document is issued under the authority in Section 591(b) of the Education Consolidation and Improvement Act of 1981 (ECIA). This guidance is binding on all officials of the U.S. Department of Education. It is not binding, however, on State and local educational agencies and does not foreclose the development of alternative approaches that are consistent with the statute and regulations but may be more in keeping with local needs and circumstances. Rather, State and local officials are free to develop -- indeed are encouraged to develop -- alternative approaches.

U.S. Department of Education

July 1983

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PURPOSE

Statutory Requirement

See Section 561(a) of Chapter 2, Appendix A at 1.

Regulatory Requirement

See §298.1 of the final regulations, Appendix B at 5.

Questions and Answers

1. May preschool children receive Chapter 2 services?

Yes. See Section 561(a) of Chapter 2, Appendix A at 1.

* * * * *

DEFINITIONS

Statutory Requirement

See Section 595(a) of the ECIA, Appendix A at 13-14.

Regulatory Requirement

See §298.2 of the final regulations, Appendix B at 5.

* * * * *

GENERAL RESPONSIBILITIES OF STATE AND LOCAL EDUCATIONAL AGENCIES

Statutory Requirements

The following sections of Chapter 2 contain the basic responsibilities of State and local educational agencies:

Section 561(b) of Chapter 2, Appendix A at 1.

Section 564(a)(1) of Chapter 2, Appendix A at 2.

Section 566(c) of Chapter 2, Appendix A at 4.

Regulatory Requirement

See §298.3 of the final regulations, Appendix B at 5.

* * * * *

STATE APPLICATIONS

Statutory Requirement

See Section 564 of Chapter 2, Appendix A at 2-3.

Regulatory Requirement

See §298.4 of the final regulations, Appendix B at 5-6.

Questions and Answers

2. Will the Department require a standard State application for Chapter 2?

No. A State may submit its Chapter 2 application in any form that the State determines is appropriate. See §298.4(a)(2) of the final regulations, Appendix B at 5.

3. May a State's Chapter 2 application cover more than one year?

Yes. A State may file a Chapter 2 application that covers one, two, or three years. See Section 564(b) of Chapter 2, Appendix A at 3.

4. What is the function of the Secretary with respect to State applications?

As indicated in the preamble of the final regulations (Appendix B at 1), the Secretary checks to ensure that each State's Chapter 2 application meets the statutory requirements in Section 564 of Chapter 2 (Appendix A at 2-3). If the application meets those requirements, the Secretary retains the application and awards the State its Chapter 2 grant. If the application does not meet those requirements, the Secretary indicates to the State the requirements that the application failed to meet. The State may amend its application and submit those amendments to the Secretary.

5. In its Chapter 2 application, must a State indicate the amount of funds it intends to allocate to various Chapter 2 activities?

Section 564(a)(3) of Chapter 2 (Appendix A at 2-3) requires a State that desires to receive grants under Chapter 2 to file an application which "sets forth the planned allocation of funds reserved for State use of [Chapter 2] and among the authorized programs and projects which are to be implemented, and the allocation of such funds required to implement section 586, including administrative costs of carrying out the responsibilities of the State educational agency under [Chapter 2]." (emphasis added)

6. How may a State meet the applicable requirement in Section 435 of GEPA (single State application) with respect to its Chapter 2 application?

See the preamble of the final regulations, Appendix B at 3.

7. Should a State's Chapter 2 application contain any provisions regarding the use of "carryover funds" that remain unobligated from the 1981 appropriation?

No, not necessarily. The final regulations are silent on how SEAs should account for their use of carryover funds. Therefore, SEAs are not required to report their use of such funds to the Secretary. However, it would be helpful to the Secretary for SEAs to indicate in their Chapter 2 applications how their carryover funds will be used. See Section 514(b)(2)(B) of the Omnibus Education Reconciliation Act of 1981 (Appendix A at 15) and the preamble of the final regulations (Appendix B at 4).

8. Under what circumstances must a State amend its Chapter 2 application?

See section 564(b) of Chapter 2, Appendix A at 3; §298.4(b)(2) of the final regulations, Appendix B at 5.

9. What procedures are to be followed to amend a State application?

Amendments to State applications must comply with the requirements in Section 564 of Chapter 2 (Appendix A at 2-3). If the amendments deal with the items listed in Section 564(a)(2), the State Advisory Committee must be given an opportunity to advise the SEA on the changes. The amendments must be filed with the Secretary who checks to ensure that they meet the requirements in Section 564.

* * * * *

STATE ADVISORY COMMITTEE

Statutory Requirement

See Section 564(a)(2) of Chapter 2, Appendix A at 2.

Regulatory Requirement

See §298.6 of the final regulations, Appendix B at 6.

Questions and Answers

10. What is the role of the State Advisory Committee?

See Section 564(a)(2) of Chapter 2, Appendix A at 2; and §298.6(c) of the final regulations, Appendix B at 6.

11. Does the State Advisory Committee deal with Chapter 2 only?

As Section 564(a)(2) of Chapter 2 (Appendix A at 2) and §298.6(c) of the final regulations (Appendix B at 6) provide, the only statutory responsibilities of the State Advisory Committee relate to Chapter 2.

12. Does the State Advisory Committee advise on the use of Chapter 2 funds distributed to LEAs under Section 565(a)?

No. The State Advisory Committee advises only on use of the Chapter 2 funds reserved for a State's use under Section 565(a) of Chapter 2, and on the formula for distributing the LEAs' funds. It does not advise on the use by LEAs of their Chapter 2 allocations.

13. May the State Advisory Committee mandate educational priorities for a State's use of its Chapter 2 funds?

According to Section 564(a)(2) of Chapter 2 (Appendix A at 2), the State Advisory Committee's function is purely advisory. Therefore, although it must advise the SEA on the allocation of Chapter 2 funds reserved for the State's use under Section 565(a) of Chapter 2, the State Advisory Committee may not mandate educational priorities.

14. Is the State Advisory Committee required to advise the SEA on how the funds reserved for a State's use are to be expended?

Yes. The State Advisory Committee should, to discharge its responsibility under Section 564(a)(2) of Chapter 2 (Appendix A at 2), make specific recommendations to the SEA on how the funds reserved for a State's use are to be expended. In other words, the State Advisory Committee cannot merely give the SEA complete discretion to spend those funds. The State Advisory Committee may, of course, approve allocations recommended by the SEA. As stated in question #13, however, the State Advisory Committee cannot mandate that its recommendations be accepted.

15. To what extent does the State Advisory Committee advise the SEA concerning the evaluation of State programs?

Section 564(a)(2) of Chapter 2 (Appendix A at 2) requires the State Advisory Committee to advise the SEA on the evaluation of State programs assisted under Chapter 2. This requirement applies only to those Chapter 2 programs operated with Chapter 2 funds reserved for the State's use. As a result, it does not apply to Chapter 2 programs operated with funds allocated to LEAs. However, Section 564(a)(5) of Chapter 2 (Appendix A at 3) directs that the evaluation required by that section, which does apply to programs operated with funds allocated to LEAs, include comments of the State Advisory Committee.

16. May the State Board of Education be the State Advisory Committee?

Yes, as long as the conditions set forth in §298.6(b) of the final regulations (Appendix B at 6) are met.

17. How many members must there be on the State Advisory Committee?

The Chapter 2 statute establishes no maximum or minimum number of members. It does require that the State Advisory Committee meet the representation requirements of Section 564(a)(2) of Chapter 2 (Appendix A at 2). One person, however, may represent more than one of the listed groups.

18. Must "persons representative of" the groups listed in Section 564(a)(2) of Chapter 2 actually be members of those groups (e.g., students)?

Not necessarily. Section 564(a)(2) of Chapter 2 (Appendix A at 2) requires that the State Advisory Committee be broadly representative of the educational interests and the general public in the State, including persons representative of the groups listed in (A)-(G). Thus, although all the interests must be represented, it is not essential that members of those groups be named for every category as long as those named can be reasonably deemed to represent their category.

19. May the expenses of a State Advisory Committee be charged against the Chapter 2 funds reserved for State use?

Section 564(a)(3) of Chapter 2 (Appendix A at 2-3) provides for the payment of an SEA's administrative costs out of Chapter 2 funds. The expenses incurred by a State Advisory Committee in carrying out its functions under Section 564(a)(2) are administrative costs that may be paid from the Chapter 2 funds reserved for State use.

20. What expenses incurred by a State Advisory Committee are allowable costs?

There must be a direct relationship between the costs incurred for a Chapter 2 project and the authorized purposes of that project. Thus, the expenses incurred by a State Advisory Committee should be consistent with the authorized functions of the committee under Section 564(a)(2) of Chapter 2 to advise the SEA through a process of "active and continuing consultation." Within this framework, SEAs have considerable flexibility in determining what expenses of the State Advisory Committee are allowable.

21. May costs incurred for expenses of the State Advisory Committee prior to July 1, 1982 be charged to the State's Chapter 2 account after July 1, 1982?

Yes. See the preamble of the final regulations, Appendix B at 1.

22. May a State receive a Chapter 2 grant if it does not establish a State Advisory Committee?

No. Section 564(a)(2) of Chapter 2 (Appendix A at 2) and §298.6(a) of the final regulations (Appendix B at 5) in effect require any State that desires to receive a grant under Chapter 2 to establish a State Advisory Committee.

* * * * *

ALLOCATION OF CHAPTER 2 FUNDS TO STATES

Statutory Requirement

See Section 563 of Chapter 2, Appendix A at 2.

Regulatory Requirement

See §298.5 of the final regulations, Appendix B at 6.

Questions and Answers

23. Is the Secretary's basis for allotting Chapter 2 funds to States the same as an SEA's basis for distributing Chapter 2 funds to LEAs?

No. Under Section 563 of Chapter 2 (Appendix A at 2) the Secretary allots Chapter 2 funds to States based on the ratio of the school-age population (children aged 5 through 17) in the State to the school-age population of all the States. Once a State receives its Chapter 2 funds, however, Section 565(a) of Chapter 2 (Appendix A at 3) requires the SEA to distribute not less than 80 percent of those funds to its LEAs according to the relative enrollments in public and nonpublic schools within those LEAs adjusted in accordance with criteria approved by the Secretary to provide higher per pupil allocations to those LEAs with the greatest numbers or percentages of "high-cost" children.

24. What requirements must a State meet in order to receive a Chapter 2 grant?

To receive a Chapter 2 grant, a State must have on file with the Secretary an application that satisfies the requirements in Section 564 of Chapter 2. In addition, before the SEA may distribute Chapter 2 funds to LEAs, the SEA must have its formula for the allocation of Chapter 2 funds to LEAs approved by the Secretary. See the preamble of the final regulations, Appendix B at 1-2.

25. Is there any provision for the Department of the Interior's Bureau of Indian Affairs (BIA) to receive financial assistance for Indian children under Chapter 2?

No. Chapter 2 does not contain a setaside under which BIA would receive Chapter 2 funds to serve Indian children.

* * * * *

LOCAL APPLICATIONS

Statutory Requirement

See Section 566 of Chapter 2, Appendix A at 3-4.

Regulatory Requirement

See §298.7 of the final regulations, Appendix B at 6.

Questions and Answers

26. What is the function of the SEA with respect to local applications?

The SEA checks to ensure that each LEA's application meets the statutory requirements in Section 566 of Chapter 2 (Appendix A at 3-4). If the application meets those requirements, the SEA files the application and distributes to the LEAs their allocations of Chapter 2 funds.

27. In its Chapter 2 application, must an LEA indicate the amount of funds it intends to allocate to various Chapter 2 activities?

Section 566(a)(1) of Chapter 2 (Appendix A at 3) requires an LEA that desires to receive a grant under Chapter 2 to file an application which "sets forth the planned allocation of funds among sub-chapters A, B, and C of [Chapter 2] and for the programs authorized by such subchapters which it intends to support, including the allocation of such funds required to implement section 586." (emphasis added)

28. How may an LEA meet the applicable requirements in Section 436 of GEPA (single LEA application) with respect to its Chapter 2 application?

See the preamble of the final regulations, Appendix B at 3.

29. Under what circumstances must an LEA amend its Chapter 2 application?

See Section 566(b) of Chapter 2, Appendix A at 4; §298.7(b)(2) of the final regulations, Appendix B at 6.

30. Should an LEA's Chapter 2 application contain any provisions regarding the use of "carryover funds" that remain unobligated from the 1981 appropriation?

No, not necessarily. SEAs may wish LEAs to indicate in their Chapter 2 applications how their carryover funds will be used. See Section 514(b)(2)(B) of the Omnibus Education Reconciliation Act of 1981 (Appendix A at 15) and the preamble of the final regulations (Appendix B at 4).

31. Must an LEA consult with parents, teachers, and administrative personnel in developing its Chapter 2 applications?

Yes. See Section 566(a)(4) of Chapter 2, Appendix A at 4; §298.7(c) of the final regulations, Appendix B at 6.

32. What standards constitute the "systematic consultation with parents" required by Section 566(a)(4) of Chapter 2?

It is the responsibility of each LEA to define, based on local needs and circumstances, what standards constitute "systematic consultation with parents." However, "systematic consultation" normally would be an ongoing process that is open to all interested persons and is calculated to provide advice within a time frame that can affect the ultimate decision.

33. What types of information could an LEA provide to parents in order to facilitate effective parent participation in Chapter 2 programs?

Meaningful parent involvement requires adequate information upon which to base that involvement. LEAs may wish to consider providing parents, or making available to parents -- in an ongoing, timely, and adequate manner -- proposed and final project applications, needs assessment documents,

project plans, budgetary information, evaluation data, local, State, and Federal laws, regulations, and guidelines, and any other Chapter 2 information needed for full, effective parent participation.

34. Is the requirement for "systematic consultation" with parents, teachers, and administrative personnel satisfied by holding an official, public meeting of the local school board to discuss how Chapter 2 funds are to be spent?

Section 566(a)(4) of Chapter 2 (Appendix A at 4) states that consultation involves the allocation of funds and the design, planning, and implementation of Chapter 2 programs. Although the form of consultation is a matter for local decision, Congress appears to have contemplated additional consultation beyond, or supplemental to, standard local practice exemplified by school board meetings. If an LEA does choose to make the local school board the vehicle for such consultation, Chapter 2 should be a standing item on the board's agenda for all public meetings.

* * * * *

ALLOCATION OF CHAPTER 2 FUNDS TO LOCAL EDUCATIONAL AGENCIES

Statutory Requirement

See Section 565 of Chapter 2, Appendix A at 3.

Regulatory Requirement

See §298.8 of the final regulations, Appendix B at 6.

Questions and Answers

35. What are the requirements that SEAs must follow to determine the allocation of Chapter 2 funds --

- to LEAs? See Section 565(a) of Chapter 2, Appendix A at 3; §§298.6(c)(2) and 298.8(b) of the final regulations, Appendix B at 6.
- reserved for State use? See Section 564(a)(2) of Chapter 2, Appendix A at 2; §298.6(c)(1) of the final regulations, Appendix B at 6.

36. May an SEA reserve less than 20 percent of its Chapter 2 allocation for State use and distribute more than 80 percent to its LEAs?

Yes. Section 565(a) of Chapter 2 (Appendix A at 3) and §298.8(b) of the final regulations (Appendix B at 6) require that an SEA distribute at least 80 percent of the State's Chapter 2 funds to LEAs. Thus, nothing prohibits an SEA from distributing more than 80 percent to LEAs within the State.

37. Does an LEA receive Chapter 2 funds based on the number of children residing in the LEA or the number enrolled in schools within the LEA?

As indicated in Section 565(a) of Chapter 2 (Appendix A at 3) and §298.8(b) of the final regulations (Appendix B at 6), an LEA receives Chapter 2 funds according to the relative number of children enrolled in public and nonpublic elementary and secondary schools within the LEA.

38. Is enrollment to be counted by average daily attendance, average daily membership, or some other method?

Each State may decide what uniform criterion of enrollment it wishes to use.

39. In distributing Chapter 2 funds to LEAs, must an SEA count all children enrolled in nonpublic schools even though not all of those children are participating in Chapter 2 programs?

Yes. Section 565(a) of Chapter 2 (Appendix A at 3) and §298.8(b) of the final regulations (Appendix B at 6) require the distribution of Chapter 2 funds to an LEA according to the relative enrollments in public and nonpublic schools within the LEA. This section makes no distinction between children who are participating and those who are not participating in Chapter 2 programs. Rather, the critical factor for purposes of distributing Chapter 2 funds to LEAs is whether the children are attending a nonpublic educational institution that is considered an elementary or secondary school according to State law.

40. Are children in Indian contract schools or in schools operated by BIA eligible to receive Chapter 2 services?

Whether Indian children in contract schools or in schools operated by BIA are eligible to receive Chapter 2 services depends upon the relationship that the State or LEA has with particular schools. If the State considers the school to be a local educational agency, then the SEA should allocate Chapter 2 funds to the school as the SEA would to the other LEAs in the State. On the other hand, if a school is not an LEA but is located within the boundaries of an LEA and the State counts the children in the school as private school children, the LEA should treat the school as a private school and follow the requirements in Section 566 of Chapter 2 (Appendix A at 9-11) and §§298.21-298.28 of the final regulations (Appendix B at 8-9).

41. How do children in State-operated schools serving groups such as neglected or delinquent youth, mentally retarded persons, or mentally ill persons receive Chapter 2 services?

How children in a State-operated school receive Chapter 2 services depends on the school's status within a State. For example, if the State considers a State-operated school to be an LEA within the definition in Section 595 of Chapter 2 (Appendix A at 13-14), the school would apply for and receive Chapter 2 funds on the same basis as any other LEA in the State. Under this circumstance, the State-operated school would provide its own Chapter 2 services. If the State-operated school is not an LEA but has an arrangement with an LEA under which the school receives educational services, the children in the State-operated school would be counted as part of the LEA's enrollment and the LEA would provide Chapter 2 services to them.

42. Some States have regional service centers or intermediate units that provide educational services to a number of LEAs. In many instances, these regional centers meet the statutory definition of an LEA. Also, as a result of these arrangements, a child may be enrolled in both a component LEA and a regional center. How should States deal with regional service centers, which meet the statutory definition of an LEA, in the Chapter 2 distribution formula?

Section 565(a) of Chapter 2 (Appendix A at 3) does not permit any double counting of children. Thus, when both a regional center and the component LEAs that it serves qualify as LEAs under the statutory definition of an LEA, Chapter 2 requires the SEA to distribute funds to either the regional center or the component LEAs, or to determine an equitable means of dividing the funds among the eligible LEAs. For example, if a regional service center is providing services to children in the component LEAs within the center's service area, the SEA may choose to distribute Chapter 2 funds to the component LEAs which could then contract with the regional center for those services. Other options are also available. If an SEA decides to distribute Chapter 2 funds directly to a regional center on the basis that the center is an LEA, then the regional center must apply for those funds under Section 566 of Chapter 2 and meet all the requirements imposed on LEAs by the statute and the final regulations.

43. What kind of children are those whose education imposes a higher than average cost per child ("high-cost" children)?

Section 565(a) of Chapter 2 (Appendix A at 3) and §298.8(b) of the final regulations (Appendix B at 6) require an SEA to adjust its formula to provide higher per pupil allocations to LEAs that have the greatest numbers or percentages of children whose education imposes a higher than average cost per child. Section 565(a) lists three examples of the categories of children that Congress regarded as "high-cost" children: Children from low-income families; children living in economically depressed urban and rural areas; and children living in sparsely populated areas. Using these examples as guidance, each SEA has substantial freedom to identify which categories of children it will designate as "high-cost" children. These examples of "high-cost" children are not exclusive, however. Therefore, an SEA may establish criteria, subject to the Secretary's approval, that include other "high-cost" children such as handicapped children, children of limited English-speaking proficiency, children in districts undergoing desegregation, or gifted and talented children.

44. Must an SEA adjust its formula to provide higher per pupil allocations to LEAs with the greatest numbers or percentages of "high-cost" children even if the State has already taken those children into consideration through its State equalization formula?

Yes. See §298.8(c) of the final regulations, Appendix B at 6. Because this adjustment is a Chapter 2 requirement, an SEA in a State with a State equalization formula that takes into consideration "high-cost" children must still adjust its Chapter 2 formula. SEAs, however, have considerable flexibility in how they make this adjustment.

45. Must the District of Columbia, Puerto Rico, and Hawaii adjust their Chapter 2 allocations under Section 565 of Chapter 2.

No. Because the District of Columbia, Puerto Rico, and Hawaii each have only one LEA, they do not have to adjust their Chapter 2 allocations under Section 565 of Chapter 2 (Appendix A at 3) to provide higher per pupil allocations to LEAs that have the greatest numbers or percentages of "high-cost" children.

46. In adjusting its allocation formula to account for "high-cost" children, may an SEA exclude LEAs without "high-cost" children from receiving Chapter 2 funds?

No. As indicated in §298.3(c) of the final regulations (Appendix B at 5), Section 565 of Chapter 2 requires an SEA to provide an allocation to an LEA otherwise eligible even though it has no "high-cost" children.

47. May all LEAs having "high-cost" children receive higher per pupil allocations based on the adjustment required under Section 565(a) of Chapter 2 or is this adjustment confined to only those LEAs with the greatest numbers or percentages of such children?

Section 565(a) of Chapter 2 (Appendix A at 3) requires SEAs to adjust their formulas to provide higher per pupil allocations to LEAs which have the greatest numbers or percentages of "high-cost" children. In implementing this provision, an SEA has a number of options. It may adjust its formula so that any LEA having "high-cost" children receives a higher per pupil allocation than LEAs with no "high-cost" children. The SEA may also adjust its formula so that not all LEAs having "high-cost" children receive higher per pupil allocations. Additionally, the SEA may adjust its formula so that all LEAs receive additional funds generated by "high-cost" children according to the number of such children present in each LEA. Other options may be available.

48. May an SEA include in its criteria for the distribution of Chapter 2 funds to LEAs a "hold-harmless" provision that takes into consideration the amount of funds received from the antecedent programs?

No. Several States included in their proposed Chapter 2 formulas "hold-harmless" provisions that guaranteed LEAs a percentage of the funds they had received under one or more of the antecedent programs. These formulas had to be revised because the "hold-harmless" provisions bore no relationship to either enrollment or "high-cost" children.

Congress made no provision in Section 565 of Chapter 2 for such "hold-harmless" provisions. To the contrary, Congress specifically provided for an allocation formula based on enrollments in public and private schools, adjusted by criteria to provide higher per pupil allocations to LEAs with the greatest numbers or percentages of "high-cost" children. These criteria must be reasonably calculated to produce an equitable distribution of funds with reference to the "high-cost" children selected as part of the formula. The criteria must relate to actual counts of children whose education imposes extra costs on the school districts in which they are located.

49. What standards will the Secretary use in approving an SEA's criteria for adjusting its allocation formula to provide for "high-cost" children?

See Section 565(b) of Chapter 2, Appendix A at 3; §298.8(d) of the final regulations, Appendix B at 6.

50. If an SEA wishes to modify its criteria for the distribution of Chapter 2 funds to LEAs after those criteria have been approved by the Secretary, must it request approval again from the Secretary?

Yes. Because Section 565(a) of Chapter 2 (Appendix A at 3) requires the Secretary to approve an SEA's criteria for the distribution of Chapter 2 funds, the Secretary must approve modifications of those criteria. In addition, the State Advisory Committee must have the opportunity to comment on the modifications.

51. If an LEA does not apply for Chapter 2 funds, may its funds be distributed to other LEAs?

After the SEA makes the necessary arrangements for the provision of Chapter 2 services to children enrolled in eligible private schools, the SEA may, in accordance with §298.9 of the final regulations (Appendix B at 6), distribute the balance of that LEA's Chapter 2 allocation to other LEAs in the State.

REALLOCATION OF CHAPTER 2 FUNDS

Regulatory Requirement

See §298.9 of the final regulations, Appendix B at 5.

Questions and Answers

52. May an SEA reallocate Chapter 2 funds?

Yes. See §298.9(a) of the final regulations, Appendix B at 6.

53. During what period of time may an SEA reallocate Chapter 2 funds?

As indicated in §298.9(b) of the final regulations (Appendix B at 6), an SEA may reallocate Chapter 2 funds only during the fiscal year for which the funds were appropriated or during the succeeding fiscal year.

54. Under Section 412 of GEPA and §298.14 of the final regulations, an SEA or LEA must obligate funds during the fiscal year for which the funds were appropriated or during the succeeding fiscal year. Section 298.9 of the regulations permits an SEA to reallocate Chapter 2 funds from one LEA to another. Must the reallocation occur within the year for which the funds were appropriated or the succeeding fiscal year? If so, wouldn't the reallocation have the practical effect of curtailing the period of availability of funds at the LEA level?

As provided in §298.9(b)(1) of the final regulations (Appendix B at 6), a reallocation of funds from one LEA to another must be made during the fiscal year for which the funds were appropriated or during the succeeding fiscal year. To avoid SEA reallocations of funds that the LEA would have obligated during such succeeding fiscal year, §298.9(a)(1)(ii)(B) provides that the SEA may only reallocate Chapter 2 funds that exceed the amount that the LEA needs to provide a prudent and justifiable reserve of funds for operating its Chapter 2 projects effectively during the next fiscal year.

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USE OF CHAPTER 2 FUNDS

Statutory Requirement

See Sections 571-582 of Chapter 2, Appendix A at 4-8.

Regulatory Requirement

See §298.10 of the final regulations, Appendix B at 6.

Questions and Answers

Use of funds in general

55. May an SEA or a State legislature establish -- through the budget approval process, legislation, or other means -- binding requirements on an LEA with respect to the division of funds received under Section 565(a) among the purposes of Chapter 2 as set forth in Subchapters A, B, and C?

No. See Section 566(c) of Chapter 2, Appendix A at 4; §298.3(b) of the final regulations, Appendix B at 4.

56. Is there any guidance that SEAs and LEAs may use to determine what expenditures are allowable?

There must be a direct relationship between the costs incurred for a Chapter 2 project and the authorized purposes of that project. Within this framework, SEAs and LEAs have considerable flexibility in determining what costs are allowable under Chapter 2. In the past, the cost principles set forth in Appendix C to 34 CFR Part 74 have governed SEAs and LEAs in determining allowable costs. As indicated in the preamble of the final regulations (Appendix B at 3-4), adherence to the principles in 34 CFR Part 74 is not required for Chapter 2. Instead, SEAs and LEAs may apply equivalent standards of their own. SEAs and LEAs continuing to follow the cost principles in 34 CFR Part 74, however, will be considered to be in compliance.

57. May Chapter 2 funds be used to hire personnel?

Yes, provided those personnel are hired to carry out activities authorized under Chapter 2 and State practices permit such use of Chapter 2 funds.

58. May Chapter 2 funds be used to pay for construction costs?

With one exception, Chapter 2 funds may not be used to pay for the costs of construction because Chapter 2 does not specifically authorize construction nor was it authorized under any of the antecedent programs that have been consolidated into Chapter 2.

The one exception is contained in Section 586(a)(1) (Appendix A at 9-10) (dealing with the participation of children enrolled in private schools), which permits an SEA or LEA to use Chapter 2 funds for the construction of public facilities as may be necessary to meet the agency's responsibility for providing Chapter 2 services to children enrolled in private schools. Title to any property constructed with Chapter 2 funds under this authority must be in a public agency. See Section 586(c)(1) of Chapter 2, Appendix A at 10.

59. May Chapter 2 funds be used to pay the costs of unemployment compensation?

Regardless of the source of funds for an employee's salary, benefit levels and entitlement to unemployment compensation are determined by the State in which the person is employed. Although Chapter 2 funds may be used for the salaries of persons employed by Chapter 2 projects, the employer of the Chapter 2 project staff is the SEA or LEA in which the staff work, and not the federal government. Therefore, any determination as to whether a Chapter 2 employee is entitled to receive unemployment compensation is a matter of State law.

If State law permits, there are at least three acceptable ways in which an SEA or LEA may use a portion of its Chapter 2 funds to help defray unemployment compensation costs. If an LEA currently participates in an unemployment compensation insurance program in which the insurance rate charged is principally a function of the district's past unemployment compensation experience and the rate is applied uniformly and consistently to all salaries paid by the district, the district may use Chapter 2 funds to pay premiums based on the insurance rate and the amount of the salaries it is paying with those funds. Under this approach, however, Chapter 2 funds may be used to pay the premiums only if the rate is applied uniformly and consistently to all salaries being paid by the district.

Similarly, if an LEA has established a reserve from which it makes payments on unemployment compensation claims, it may use Chapter 2 funds to make payments to that reserve. Payments of Chapter 2 funds for that purpose are allowable

to the extent that the type of coverage, extent of coverage, and the rate of payment would have been allowed had insurance been purchased to cover the risks.

If an LEA does not currently participate in an unemployment compensation insurance program or contribute to a reserve, it may establish a fringe benefit rate as the basis for the use of Chapter 2 funds to pay a portion of the amount of its unemployment compensation claims. That rate is the percentage that the unemployment compensation claims represent of the total amount of salaries being paid by the district. The LEA multiplies the total amount of the salaries of its Chapter 2 funded personnel by this rate to compute the amount of Chapter 2 funds that it may use to pay its unemployment compensation claims. For example, if the unemployment compensation claims are \$20,000 and the total amount the school district pays for salaries is \$2,000,000 (including \$150,000 for personnel paid from the Chapter 2 grant), then the "fringe benefit rate" used to compute payments for unemployment compensation claims is one percent of the LEA's salaries. Multiplying the total amount of the salaries of personnel paid from Chapter 2 funds by this "fringe benefit rate," the district could use a total of \$1,500 in Chapter 2 funds to pay unemployment compensation claims (one percent of \$150,000).

60. To what extent may an LEA use Chapter 2 funds to pay direct administrative costs?

An LEA may use Chapter 2 funds to pay reasonable direct administrative costs associated with the operation of a Chapter 2 program. These costs may include the costs of "systematic consultation" with parents, teachers, and administrative personnel.

61. May SEAs and LEAs charge an indirect cost rate for Chapter 2?

Yes. However, SEAs and LEAs should take into consideration the Chapter 2 supplement, not supplant requirement in computing their indirect cost rate. For an example of an indirect cost rate that does not violate the supplement, not supplant requirement, see §§75.764-75.768 of EDGAR.

62. May Chapter 1 administrative funds be used to administer Chapter 2 projects?

No. Chapter 1 is designed to provide federal financial assistance to SEAs and LEAs to meet the special educational needs of educationally deprived children. Accordingly, the administrative funds earmarked for that purpose may not be used to administer the broader purposes of Chapter 2.

63. May Chapter 2 funds be used to administer Chapter 1 projects?

According to Title V of the Elementary and Secondary Education Act of 1965, funds received under Title V could be used to administer Title I of that act. Section 576 of Chapter 2 permits SEAs and LEAs to carry out those activities that they may select from the full range of programs and projects formerly authorized under Title V, among others. Therefore, Chapter 2 funds may be used to administer Chapter 1 projects.

Use of Chapter 2 funds reserved for State use

64. May all the funds reserved for State use be used for the direct operation of programs or the administration of Chapter 2?

Section 564(a)(3) (Appendix A at 2-3) requires a State's application to set forth the planned allocation of the Chapter 2 funds reserved for State use among Subchapters A, B, and C, including the administrative costs of carrying out the SEA's responsibilities and the costs of providing services to children enrolled in private nonprofit schools. Therefore, all the funds reserved for State use could be used entirely for administering Chapter 2. Conversely, all the funds could be used for programs authorized under Chapter 2.

65. May States "pool" their Chapter 2 funds for a special project such as an interstate center?

Yes. States may pool any portion of the Chapter 2 funds over which they retain discretion.

66. Are States required to comply with the requirements in Section 586 (participation of children in private schools) when they use the Chapter 2 funds reserved for State use?

Yes, if the Chapter 2 funds reserved for State use are used to support instructional or personnel training programs. See Section 586(a)(1) of Chapter 2, Appendix A at 9-10; §298.21(b)(1) of the final regulations, Appendix B at 9.

67. May States establish incentive programs with their Chapter 2 funds to influence how LEAs spend their Chapter 2 funds?

As long as the incentive program is for a purpose authorized under Chapter 2, such use of the State's Chapter 2 funds would not violate the statute.

68. May an SEA make grants to LEAs on a competitive basis under Chapter 2?

Yes. From the funds reserved for State use, an SEA may award grants or contracts on a competitive basis to LEAs, institutions of higher education, and public and private agencies, organizations and institutions to carry out activities authorized under Chapter 2.

Use of funds by LEAs.

69. Must an LEA expend Chapter 2 funds for programs authorized in each subchapter of Chapter 2 or can it concentrate its efforts on programs authorized under just one subchapter?

LEAs may use Chapter 2 funds for programs authorized in any or all of the subchapters in Chapter 2. See the preamble of the final regulations, Appendix B at 2.

70. Must an LEA spend the additional funds generated by "high-cost" children on services to benefit those children?

No. There is no requirement in Section 565(a) of Chapter 2 or §298.8(b) of the final regulations that the additional funds generated by "high-cost" children be spent specifically on services to benefit those children.

Use of funds under Subchapter A - Basic Skills Development

71. Does the reference to "planning for the utilization of funds it allocates for this Chapter" in Section 573(a) mean that an LEA must comply with the detailed requirements contained in that section for all Chapter 2 programs it operates, even if those programs are under Subchapters B or C rather than A?

The requirements for planning in Section 573(a) of Chapter 2 (Appendix A at 5) apply only to planning the school level programs that the LEA desires to operate under Subchapter A of Chapter 2.

72. If an LEA decides to operate a basic skills program with its Chapter 2 funds, must the LEA comply with the five requirements stated in Section 573(a)?

Yes. Section 573(a) of Chapter 2 (Appendix A at 5) states that school-level, basic skills programs shall include the five requirements listed in that section. However, if an LEA already is satisfying these requirements with other funds, the requirements do not have to be satisfied again with Chapter 2 funds.

73. May funds under Subchapter A - Basic Skills Development be used to support adult education programs?

Section 571 of Chapter 2 (Appendix A at 4) authorizes SEAs and LEAs to develop and implement a program designed to improve elementary and secondary school instruction in the basic skills. Section 573 (Appendix A at 5) further relates to such school-level programs. Because these sections appear to limit Chapter 2 basic skills programs to elementary and secondary school instruction, it does not appear that adult instruction in basic skills is permitted under Subchapter A. However, it may be possible for adult education programs to be supported under the authorization for community centers in Section 582(2) of Subchapter C of Chapter 2 (Appendix A at 7-8).

Use of funds under Subchapter B - Educational Improvement and Support Services

74. If an SEA or LEA chooses to spend Chapter 2 funds for educational improvement and support services, must 15 percent of those funds be utilized for programs for the handicapped?

No. Unlike Title IV-C of the Elementary and Secondary Education Act of 1965, Chapter 2 contains no requirement that 15 percent of any Chapter 2 funds spent for educational improvement and support services under Subchapter B must be used for programs to benefit handicapped children.

Use of funds under Subchapter C - Special Projects

75a. Must Chapter 2 funds used for community centers under Subchapter C be confined to elementary and secondary education programs?

No. According to Section 807 of Title VIII of the Elementary and Secondary Education Act of 1965, funds could be used for a variety of purposes -- some of which did not pertain to elementary and secondary education. Section 581 of Chapter 2 (Appendix A at 7) permits SEAs and LEAs to select activities from among the full range of programs and projects formerly authorized under Title VIII (relating to community schools). Thus, since Title VIII permitted projects in the community schools programs that did not pertain to elementary and secondary education, Chapter 2 funds may be spent for similar projects. This conclusion appears to be supported by the broad language in Section 582(2) of Chapter 2 (Appendix A at 7-8) authorizing the use of Chapter 2 funds to operate public educational facilities as community centers.

75b. May Chapter 2 funds be used to fund Follow Through projects before the expiration of the Follow Through Act?

Yes. Even though the Department is still authorized to fund projects under the Follow Through Act, SEAs and LEAs may, under Section 582(1)(c) of Chapter 2 (Appendix A at 7), use Chapter 2 funds to provide in-school and preschool partnership programs similar to those authorized under the Follow Through Act.

Miscellaneous questions on use of funds.

76. The previous categorical programs provided significant opportunities for participation by institutions of higher education. Is there a role for those institutions in programs under Chapter 2?

Yes. Several sections provide opportunities for participation in Chapter 2 programs by institutions of higher education. For example, Section 564(a)(2) of Chapter 2 (Appendix A at 2) requires representation of institutions of higher education on the State Advisory Committee. Likewise, Subchapters A - Basic Skills Development, B - Educational Improvement and Support Services, and C - Special Projects authorize SEAs and LEAs to carry out the full range of programs authorized under Chapter 2 either directly or through grants and contracts with LEAs, institutions of higher education, and other public and private agencies, organizations, and institutions. In addition, Section 583 of Chapter 2 (Appendix A at 8-9) authorizes the Secretary to carry out certain programs directly or through grants to or contracts with SEAs, LEAs, institutions of higher education, and other public and private agencies, organizations and institutions.

77. Does Chapter 2 contain any provisions to ensure continuity of the antecedent programs, such as the Emergency School Aid Act, Ethnic Heritage, etc.?

The major purpose of Chapter 2 is to consolidate at the Federal level many categorical grant programs and to transfer the decision-making authority regarding which programs are funded to SEAs and LEAs. As stated in Section 561(a) of Chapter 2 (Appendix A at 1), Chapter 2 funds may be used in accordance with the educational needs and priorities of SEAs and LEAs as determined by those agencies. Therefore, Chapter 2 permits, but does not require, SEAs or LEAs to continue any particular categorical grant programs now authorized by Chapter 2. Rather, SEAs and LEAs are free to choose those programs they will operate with Chapter 2 funds.

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USE OF "CARRYOVER FUNDS" NOT OBLIGATED AS OF
JULY 1, 1982

Statutory Requirement

See Section 514(b)(2)(B) of the Omnibus Education Reconciliation Act of 1981, Appendix A at 15.

Questions and Answers

78. What should have happened to funds appropriated for Fiscal Year 1981 for categorical programs now in Chapter 2 that were not obligated by an SEA or LEA as of July 1, 1982?

See Section 514(b)(2)(B) of the Omnibus Education Reconciliation Act of 1981 (Appendix A at 15) and the preamble of the final regulations (Appendix B at 4). Under Section 514(b)(2)(B), FY 1981 appropriations for programs consolidated by Chapter 2 that were not obligated by an SEA or LEA prior to July 1, 1982 remained available to the SEA or LEA but had to be expended and used in accordance with Chapter 2. Section 514(b)(2)(B) does not operate to make available for use under Chapter 2 such funds under grants that expired by their own terms prior to July 1, 1982 and that were not extended beyond that date in accordance with Department procedures. Section 514(b)(2)(B) only addresses the use of funds that properly remained available for obligation on July 1, 1982. However, most grants to SEAs and LEAs under the antecedent programs that were due to expire before July 1, 1982 already have been extended beyond that date. The Secretary has decided to allow unexpended funds under the relatively few remaining such grants to be carried over past July 1, 1982 for expenditure under Chapter 2. Funds under these grants must be expended by September 30, 1983.

In implementing Section 514(b)(2)(B), SEAs and LEAs did not have to alter their activities, because all of the activities authorized under the antecedent programs are also authorized under Chapter 2. However, the section did require SEAs and LEAs to expend and use those funds in accordance with the more flexible requirements of Chapter 2.

79. Could SEAs and LEAs have used carryover funds for purposes that differed from the purposes for which the funds were awarded?

Yes. In accordance with Section 514(b)(2)(B) (Appendix A at 15), an SEA or LEA could have used carryover funds for

any purposes authorized under Chapter 2, even though such purposes were different from the purposes for which the funds were originally awarded.

80. What should have happened to unobligated funds provided to agencies and institutions other than SEAs and LEAs?

See the preamble of the final regulations, Appendix B at 4.

81. When were funds from the 1981 appropriation "obligated" for purposes of Section 514(b)(2)(B)?

Section 514(b)(2)(B) (Appendix A at 15) relates to funds from the 1981 appropriation for the antecedent categorical programs that were not obligated by SEAs or LEAs as of July 1, 1982. For purposes of Section 514(b)(2)(B), funds are considered to have been obligated by an SEA or LEA according to the definition in 34 CFR §§75.707 and 76.707 of when obligations are made.

The Secretary relies on the definitions of when obligations are made contained in §§75.707 and 76.707 because these regulations applied to the antecedent programs prior to July 1, 1982. They do not apply, however, to Chapter 2 programs. Rather, as indicated in §298.14 of the final regulations (Appendix B at 7), the time at which funds are considered to be obligated for Chapter 2 purposes may be determined according to standards commonly used in the State in which the SEA or LEA is located.

82. If an SEA awarded an LEA a grant prior to July 1, 1982, are those funds considered to have been finally obligated by the SEA or could some or all of those funds have remained unobligated by the LEA as of July 1?

For purposes of Section 514(b)(2)(B), as SEA's awarding of funds to an LEA is not the final obligation of those funds. Rather, because they are funds that were originally intended for the LEA's use, they are not considered to have been finally obligated until the LEA makes an obligation.

83. To what extent do the statutes and regulations for the antecedent programs apply to carryover funds?

The statutes and regulations for the antecedent programs do not apply to any funds from the antecedent programs that were unobligated as of July 1, 1982. Rather, unobligated funds must be expended and used in accordance with the requirements of Chapter 2. See Section 514(b)(2)(B), Appendix A at 15.

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MAINTENANCE OF EFFORT

Statutory Requirement

See Section 585(a) of Chapter 2, Appendix A at 9.

Regulatory Requirement

See §§298.11-298.12 of the final regulations, Appendix B at 7.

Questions and Answers

84. Must States maintain effort in order to receive funds under Chapter 2?

Yes, unless the Secretary grants a State a waiver of the maintenance of effort requirement for one year. See Section 585(a)(1) and (a)(3) of Chapter 2, Appendix A at 9; §298.11(a) of the final regulations, Appendix B at 7.

85. What year is the preceding fiscal year?

See §298.11(a)(1) of the final regulations, Appendix B at 7.

86. What expenditures are to be included in computing "aggregate expenditures"?

See §298.11(a)(2) of the final regulations, Appendix B at 7.

87. May State and local funds for library/media centers be included in maintenance of effort determinations, even though those funds come from capital outlay funds?

Yes. When library/media centers are established, added to, or substantially upgraded, expenditures for library books and materials or for audiovisual equipment or devices may be included in maintenance of effort determinations, even though those expenditures may come from capital outlay funds.

88. May maintenance of effort be measured in terms of "constant" rather than "inflated" dollars?

No. The Chapter 2 statute does not appear to authorize the Secretary to measure maintenance of effort in "constant" dollars, rather than in "inflated" dollars.

89. How is maintenance of effort determined in a State in which State or local funds are appropriated on other than an annual basis?

If State or local funds are not appropriated in a State on an annual basis, the State may average its State and local expenditures over the number of fiscal years for which the appropriation is made. A State that chooses to average its expenditures in this way must continue to use this method for computing maintenance of effort for each year for which the State or local appropriation is made. A State that does not average its expenditures must attribute its expenditures to the fiscal year in which they were incurred.

90. To what extent does the Secretary reduce a State's Chapter 2 allocation if the State does not maintain effort at the 90 percent level?

See Section 585(a)(2) of Chapter 2, Appendix A at 9; §298.11(b)(1) of the final regulations, Appendix B at 7. For examples of how such a reduction would be made, see fiscal years 1983 and 1986 of the examples in Question # 91.

91. If a State incurs a maintenance of effort penalty, what base must be used to determine compliance with the maintenance of effort requirement in succeeding fiscal years?

See §298.11(b)(2) of the final regulations, Appendix B at 7.

EXAMPLE

1	2	3	4
Current fiscal year	Expenditures in first preceding fiscal year	Expenditures in second preceding fiscal year	Level of expenditures required to avoid maintenance of effort penalty (90% of column 2) Penalty reduction in SEA allocation
1983	\$850,000 (FY 1981) (failure to main- tain effort)	\$1,000,000 (FY 1980)	\$900,000 5.6% of SEA allocation (5/90) ((\$50,000/\$900,000))
1984	\$810,000 (FY 1982)	\$900,000 (90% of FY 1980-- i.e., third pre- ceding fiscal year--instead of FY 1981)	\$810,000 none
1985	\$800,000 (FY 1983)	\$810,000 (FY 1982)	\$729,000 none
1986	\$700,000 (FY 1984) (failure to main- tain effort)	\$800,000 (FY 1983)	\$720,000 2.9% of SEA allocation ((\$20,000/\$720,000))

92. When there is a failure to meet the maintenance of effort requirement and a State's Chapter 2 allocation is reduced, may the State reduce the allocation of the LEA or LEAs that caused the State to fail to maintain effort in order to reflect that failure?

No. The reduced sum made available to an SEA that failed to maintain effort is the sum the SEA must distribute under Section 565(a) of Chapter 2 (Appendix A at 3). There is no provision in Section 565(a) for reducing an LEA's allocation if that LEA caused the SEA to fail to maintain effort. Nothing in Chapter 2, however, forbids an SEA from allocating the Chapter 2 funds reserved for State use to only those LEAs that maintained effort.

93. Under what circumstances may the Secretary grant a State a waiver of the maintenance of effort requirement?

See Section 585(a)(3) of Chapter 2, Appendix A at 9;
§298.12(b) of the final regulations, Appendix B at 7.

94. What effect does a waiver of the maintenance of effort requirement have on a State's Chapter 2 allocation?

See §298.12(c)(1) of the final regulations, Appendix B at 7.

95. After the maintenance of effort requirement has been waived in a State, what base must be used to determine compliance with that requirement in succeeding fiscal years?

See §298.12(c)(2) of the final regulations, Appendix B at 7.

96. Must private schools maintain effort?

No. The maintenance of effort requirement in Section 585(a) of Chapter 2 (Appendix A at 9) is calculated on the basis of either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education. Expenditures for private education are not considered in the determination.

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SUPPLEMENT, NOT SUPPLANT

Statutory Requirement

See Section 585(b) of Chapter 2, Appendix A at 9.

Regulatory Requirement

See §298.13 of the final regulations, Appendix B at 7.

Questions and Answers

97. What restrictions does the supplement, not supplant requirement impose on SEAs' or LEAs' use of Chapter 2 funds?

By enacting the supplement, not supplant provision contained in Section 585(b) of Chapter 2 (Appendix A at 9), Congress intended that Chapter 2 funds be used only to supplement the educational programs generally offered with State and local funds. To be in compliance with this requirement, therefore, an SEA or LEA may not divert State and local funds from an activity merely because Chapter 2 funds are available. In other words, the use of Chapter 2 funds may not result in a decrease in State and local funds for a particular activity which, in the absence of the Chapter 2 funds, would have been available to conduct the activity. A specific example of such a circumstance is any program that an SEA or LEA is required by law to provide. Because the SEA or LEA would have to use State and local funds to provide particular statutorily-required services in the absence of Chapter 2 funds, the SEA or LEA may not use Chapter 2 funds to replace the State and local funds it would otherwise be required by law to use. Rather, the SEA or LEA may only use Chapter 2 funds to provide supplemental services that it would not have provided had the Chapter 2 funds not been available. The supplement, not supplant requirement, however, does not prohibit the use of Chapter 2 funds for programs to meet the needs of children in schools undergoing court-ordered desegregation. Support of such use of funds was specifically authorized under the Emergency School Aid Act and continues to be authorized under Chapter 2.

98. In States with school finance equalization formulas, may Chapter 2 funds be used in lieu of State dollars to make payments to LEAs?

No. Section 585(b) of Chapter 2 (Appendix A at 9) and §298.13 of the final regulations (Appendix B at 7) state that an SEA or LEA may use and allocate Chapter 2 funds only to supplement and, to the

extent practical, increase the level of funds that would, in the absence of federal funds made available under Chapter 2, be made available from non-federal sources. In no case may such funds be used to supplant funds from non-federal sources. By taking an LEA's Chapter 2 funds into account in determining the amount of funds a State must supply to an LEA to equalize its financial resources, the State is using Chapter 2 funds to supplant State funds that it otherwise would have to allocate to the LEA.

99. Does it violate the supplement, not supplant requirement if an LEA uses Chapter 2 funds to continue a program previously operated with State funds, if the LEA no longer qualifies for the State funds?

An LEA may have qualified for State funds to operate a program for disadvantaged children, for example, based on the number of such children attending schools in the LEA. If the number of children goes down and the LEA therefore no longer qualifies for the State funds, the LEA may continue to operate the program with Chapter 2 funds without violating the supplement, not supplant requirement. There is no violation because the State funds would not be available, in the absence of Chapter 2, to continue the program previously provided. This answer, of course, presumes that the LEA does not have other funds available with which it would fund the program in the absence of Chapter 2.

100. May Chapter 2 funds be used to replace the share of State funds previously used to support certain State-level activities without violating the supplement, not supplant requirement?

Under the supplement, not supplant requirement, a State must look at what educational activities it would support with State funds if no Chapter 2 funds were available. If a State can demonstrate that it would not have State funds available to fund particular activities, or for some other reason would not have used State funds for the particular activities, then it may be possible to use Chapter 2 funds to support those activities without violating the supplement, not supplant requirement. However, it is a violation of that requirement if a State decreases State funds for particular activities because Chapter 2 funds are available to support those activities.

101. If a State previously provided "voluntary matching funds" in an antecedent program, is the State required to continue to provide those matching funds if it conducts a similar program under Chapter 2?

Chapter 2 contains no matching requirement. However, if a State replaces State funds previously used for an antecedent program with Chapter 2 funds, it may violate the supplement, not supplant requirement unless the State can demonstrate that it would not have funded the program in the absence of Chapter 2 funds.

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AVAILABILITY OF FUNDS

Statutory Requirements

See Section 594 of the ECIA, Appendix A at 13.

In addition, Section 596(b) of the ECIA (Appendix A at 14) makes Section 412 of GEPA (Appendix A at 24-25) applicable to any Chapter 2 funds appropriated for any fiscal year.

Regulatory Requirement

See §298.14 of the final regulations, Appendix B at 7.

Questions and Answers

102. When are Chapter 2 funds obligated?

Under §298.14 of the final regulations (Appendix B at 7), Chapter 2 funds are obligated when an SEA or LEA commits those funds, according to State law or practice, to the support of specific programmatic or administrative activities and identifies the Chapter 2 funds allocated for a particular fiscal year as supporting those specific programmatic or administrative activities.

103. If State law or practice does not provide adequate guidance, what guidance may SEAs and LEAs use to determine when funds are considered to have been obligated?

See §298.14(c) of the final regulations, Appendix B at 7; the preamble of the final regulations, Appendix B at 3-4.

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RECORDKEEPING

Statutory Requirements

The following sections contain the Chapter 2 recordkeeping requirements applicable to --

SEAs

Section 564(a)(6) of Chapter 2, Appendix A at 3.
Section 435(b)(5) of GEPA, Appendix A at 37.
Section 437(a) of GEPA, Appendix A at 38.

LEAs

Section 566(a)(3) of Chapter 2, Appendix A at 4.
Section 436(b)(3) of GEPA, Appendix A at 37.
Section 437(a) of GEPA, Appendix A at 38.

Regulatory Requirement

See §298.15 of the final regulations, Appendix B at 7-8.

Questions and Answers

104. What records should SEAs and LEAs retain in order to be in compliance with the recordkeeping requirements in Chapter 2?

As indicated in Sections 564(a)(6) (Appendix A at 3) and 566(a)(3) (Appendix A at 4) of Chapter 2, SEAs and LEAs must keep records as may be required for fiscal audit and program evaluation. Such maintenance of records is essential if a State is to carry out its responsibility for conducting financial and compliance audits of the Chapter 2 program under Section 1745 of the Omnibus Budget Reconciliation Act of 1981 (Appendix A at 16).

As nothing in the Chapter 2 statute or regulations indicates the precise types of records that SEAs or LEAs must maintain, these agencies are free to keep such records as they determine are necessary for fiscal audit and program evaluation. However, SEAs may wish to consider keeping records that show the following: the amount of Chapter 2 funds received; the use of the funds; the total cost of the Chapter 2 project; any costs provided from other sources; compliance with Chapter 2 requirements, including the requirements for providing for the equitable participation of private school children under Section 586;

evaluation data collected under Section 564(a)(5); and any other information needed to facilitate an effective audit or evaluation of the Chapter 2 program. LEAs may wish to consider keeping records relating to the same matters. In addition, the SEA may impose on its LEAs additional requirements relating to recordkeeping.

105. For how long should SEAs and LEAs retain their records?

See Section 437(a) of GEPA, Appendix A at 38; §298.15(c) of the final regulations, Appendix B at 8.

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EVALUATION

Statutory Requirement

See Section 564(a)(5) of Chapter 2, Appendix A at 3.

Regulatory Requirement

See §298.4(c) of the final regulations, Appendix B at 5-6.

Questions and Answers

106. How can an SEA obtain data for the annual evaluation when the Chapter 2 statute does not specifically require LEAs to file reports?

Section 566(a)(3) of Chapter 2 (Appendix A at 4) requires a participating LEA to agree to keep records and provide information to the SEA as reasonably may be required for program evaluation, consistent with the SEA's responsibilities under Chapter 2. Because an SEA has the responsibility to evaluate program effectiveness annually under Section 564(a)(5) of Chapter 2 (Appendix A at 3), it may require appropriate data from its LEAs to carry out this responsibility.

107. How can an SEA evaluate its LEAs given that LEAs have complete discretion concerning how they divide their funds among the purposes of Chapter 2.

The discretion afforded LEAs under Section 566(c) of Chapter 2 (Appendix A at 4) does not absolve an SEA of its responsibility to evaluate the effectiveness of the Chapter 2 programs carried on within the State. Rather, the SEA must evaluate the programs that its LEAs have chosen to conduct. This evaluation, however, should not be done so as to limit the LEAs' discretion.

108. Is Fiscal Year 1984 the base year for evaluating program effectiveness?

Beginning with Fiscal Year 1984, Section 564(a)(5) of Chapter 2 (Appendix A at 3) requires an SEA to provide for an annual evaluation of the effectiveness of Chapter 2 programs. Fiscal Year 1984, which covers the 1983-84 school year, is therefore the first year in which an annual evaluation is required. However, in order to evaluate the effectiveness of Chapter 2 programs more fully, the SEA may wish to submit an evaluation that includes data from the 1982-83 school year -- the first year of Chapter 2.

109. Must the annual evaluation required by Section 564(a)(5) include an evaluation of the services provided to children in private schools?

Yes. There is no provision in Chapter 2 for excluding from the annual evaluation an assessment of the effectiveness of the services provided to children in private schools.

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FEDERAL AUDITS AND ACCESS TO RECORDS

Statutory Requirement

The following sections pertain to federal audit and access to records:

Section 564(a)(6) of Chapter 2, Appendix A at 3.
Section 566(a)(3) of Chapter 2, Appendix A at 4.
Section 452 of GEPA, Appendix A at 45-46.
Section 1744 of the Omnibus Budget Reconciliation Act of 1981, Appendix A at 16.

Regulatory Requirement

See §298.16 of the final regulations, Appendix B at 8.

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STATE AUDITS

Statutory Requirement

See Section 1745 of the Omnibus Budget Reconciliation Act of 1981, Appendix A at 16.

Regulatory Requirement

See §298.17 of the final regulations, Appendix B at 8.

Questions and Answers

110. What are the audit responsibilities of a State with respect to programs operated under Chapter 2?

In accordance with Section 1745 of the Omnibus Budget Reconciliation Act of 1981 (Appendix A at 16) and §298.17 of the final regulations (Appendix B at 8), each State must conduct financial and compliance audits of funds it receives under Chapter 2. The State must conduct these audits every two years. The first two-year period begins on July 1, 1982. Insofar as practicable, the State must conduct these audits in accordance with standards contained in the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." This document is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The State may choose to follow the principles and procedures in 34 CFR §74.62 (Appendix B at 14-15) (which implements Attachment P of OMB Circular A-102) to meet this audit requirement. If it does so, the State will be deemed to be in compliance with Section 1745.

This requirement that States audit Chapter 2 funds in no way limits the authority of the Comptroller General or the Inspector General to audit Chapter 2 funds also. In practice, however, if a State meets the Chapter 2 audit requirement, the Department expects to rely on the State's independent audits and to build on such audits when a federal audit is deemed necessary.

111. How do the Comptroller General's audit standards apply to the audits required under Chapter 2?

Section 1745 requires that, insofar as is practicable, audits of Chapter 2 be conducted in accordance with standards established by the Comptroller General. These standards are contained in "Standards for Audits of Governmental Organizations, Programs, Activities, and

Functions." Government-wide audits under §74.62 of EDGAR (which implements Attachment P to OMB Circular A-102) (Appendix B at 14-15) may be used, at the discretion of the State, to fulfill the audit requirements in Section 1745. See §298.17(a)(2) of the final regulations, Appendix B at 8. Section 74.62 also makes applicable the Comptroller General's standards. Thus, the Comptroller General's standards apply to Chapter 2 audits under either §74.62 of EDGAR or Section 1745.

112. Must each LEA in a State be audited?

Yes. The Inspector General takes the position that each LEA must be audited either by the State or by an independent public accountant.

113. Under Section 1745, may a State fulfill its responsibility for auditing Chapter 2 funds by arranging for independent auditors to audit at the State and local levels?

Yes. The phrase "[e]ach State shall conduct financial and compliance audits" in Section 1745 does not appear to preclude a State from arranging for an audit by an independent public accountant who meets the standards set out by the Comptroller General, or from requiring its LEAs to arrange for their own independent audits.

114. If a State normally provides for audits of the SEA and LEAs to be conducted by certified public accountants, does Section 1745 require the State to duplicate these efforts?

As long as the audits normally conducted by a State meet the standards for audits established by the Comptroller General, Section 1745 does not require the State to conduct duplicatory audits.

115. Must States audit for compliance with the requirements in Chapter 2?

Yes. Section 1745 (Appendix A at 16) requires States to conduct compliance audits as well as financial audits of programs operated with Chapter 2 funds.

116. What happens to the audit report?

LEA audits under Section 1745 should be handled by each State in accordance with their normal audit settlement procedures for State funds. A copy of all independent or State audit reports of SEAs should be submitted to the Department.

117. May Chapter 2 funds be used to pay the costs of the audits required by Section 1745 of the Omnibus Budget Reconciliation Act of 1981?

Yes. The costs of the audits required by Section 1745 of the Omnibus Budget Reconciliation Act of 1981 may be charged to Chapter 2 as direct or indirect administrative costs.

118. May SEAs and LEAs use Chapter 2 funds to pay for the entire cost of the organization-wide audits required by §74.62 of EDGAR?

No. None of the purposes of Chapter 2 appear to authorize the conduct of audits as a program activity. However, the costs of these audits may be charged to the programs being audited as direct or indirect administrative costs. Of these audit costs, a proportionate share may be charged to the Chapter 2 program, if an SEA decides to include Chapter 2 in the organization-wide audit required by §74.62 of EDGAR (Appendix B at 14-15).

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COMPROMISE OF AUDIT CLAIMS

Regulatory Requirement

See §298.18 of the final regulations, Appendix B at 8.

Questions and Answers

119. Does the Secretary have the authority under Section 456 of GEPA to repay to an SEA or LEA up to 75 percent of any Chapter 2 funds that the Secretary recovers from the SEA or LEA following a final audit determination?

Yes. See question # 156.

120. When does the Department of Justice become involved in the compromise of audit claims?

Under Section 452(f)(1) of GEPA (Appendix A at 45-46), the Secretary has the authority to compromise audit claims of \$50,000 or less. Compromise settlements of claims in excess of that amount must be approved by the Department of Justice.

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PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

Statutory Requirement

See Section 586(a)-(c) of Chapter 2, Appendix A at 9-10.

Regulatory Requirement

See §§298.21-298.28 of the final regulations, Appendix B at 8-9.

Questions and Answers

121. Must an LEA serve children attending a private school in its geographic area even if the children reside in another district of the State, or in another State?

Yes. The LEA must provide Chapter 2 benefits to children in groups selected to receive Chapter 2 services in private schools within the LEA, regardless of where those children reside. See §298.21(a) of the final regulations, Appendix B at 8-9.

122. If a private educational institution is considered a private nonprofit elementary or secondary school under State law, may an LEA decline to serve children in that school because it does not meet other State laws?

Section 586(a) of Chapter 2 (Appendix A at 9-10) requires an LEA to provide services to children in private nonprofit elementary and secondary schools in the LEA. As a result, if the private educational institution qualifies as a private nonprofit elementary or secondary school under State law and is in compliance with applicable federal statutes and regulations, Section 586(a) requires the LEA to provide Chapter 2 services to the children in that school regardless of whether the school complies with other State laws.

123. Must an LEA provide Chapter 2 services to children in all the private schools in its attendance area--even if an individual private school does not want its children to receive Chapter 2 services?

An LEA is not required to provide Chapter 2 services to children in a private school where the officials of the school have indicated a desire that the children not participate in Chapter 2 programs.

124. If private school officials do not want their children to receive Chapter 2 services from an LEA, what happens to the funds generated by the presence of those private school children in the LEA?

If private school officials in an LEA reject Chapter 2 services for their students, that LEA may retain the Chapter 2 funds generated by those private school children for other authorized Chapter 2 purposes. These funds must be allocated proportionately for services to public and remaining private school children.

125. What duty does an LEA have to notify private school officials that children enrolled in private schools in the LEA are eligible to receive Chapter 2 benefits and services?

Section 586(a) of Chapter 2 (Appendix A at 9-10) and §298.22 of the final regulations (Appendix B at 9) require an LEA receiving Chapter 2 funds to consult with appropriate private school officials regarding the development and implementation of the Chapter 2 program before the LEA makes any decision that affects the opportunities of private school children to participate in the program. (See question #129). This consultation includes notice to private school officials of the Chapter 2 services and benefits that private school children are eligible to receive. The LEA, however, has considerable flexibility in deciding what form this notice should take.

126. How do LEAs assure that they will serve children enrolled in private schools?

Section 566(a)(2) of Chapter 2 (Appendix A at 4) requires an LEA to provide an assurance in its Chapter 2 application that it is in compliance with the provisions of Chapter 2, including the participation of children enrolled in private nonprofit schools.

127. May an LEA require assurances from a private school with respect to compliance with the Chapter 2 requirements as a condition to receiving services under Section 586 of Chapter 2 for children enrolled in that private school?

Under §298.21(a)(1) of the final regulations (Appendix B at 8), it is the responsibility of the LEA to ensure that the services, materials, and equipment it is providing for the benefit of private school children are being used in accordance with all applicable requirements. Therefore, the LEA may not require assurances from private schools regarding compliance with Chapter 2 requirements as a condition to receiving services.

128. Are children in a private school eligible to receive a portion of the Chapter 2 funds generated by "high-cost" children in an LEA even though the private school may not enroll any "high-cost" children?

As indicated in question #70, an LEA is not required to spend the additional funds generated by "high-cost" children on services to benefit those children. As stated in §298.24(a)(2)(i), an LEA -- in determining whether expenditures for Chapter 2 programs for children enrolled in private schools are equal to such expenditures for children enrolled in public schools -- may not take into account the extent to which children in private schools generated a portion of the LEA's allocation (relating to "high-cost children"). An LEA may take into account differences in the costs per child of meeting the needs of the individual children to be served and other factors that relate to these expenditures as provided in §298.24(a)(1).

129. What is the nature of the Chapter 2 requirement that an LEA must consult with appropriate private school officials?

Section 298.22 of the final regulations (Appendix B at 9) requires an LEA receiving Chapter 2 funds to consult with appropriate private school officials regarding the development and implementation of the Chapter 2 program before the LEA makes any decision that affects the opportunities of private school children to participate in the program. This consultation with private school officials would include such matters as the nature and scope of the Chapter 2 program, identification of student needs, the types and benefits to be provided children in private schools, and the manner in which benefits will be provided.

130. Who decides what Chapter 2 services children in private schools receive?

Section 586(a) of Chapter 2 (Appendix A at 9-10) provides that the LEA, after consultation with appropriate private school officials, shall provide Chapter 2 services, materials, and equipment for the benefit of children in private schools. If such services are not feasible or necessary, as determined by the LEA after consultation with appropriate private school officials, the LEA must provide other arrangements as will assure equitable participation. See Section 586(a)(1) of Chapter 2, Appendix A at 9-10. Thus, it is the LEA that ultimately determines what services the children in private schools will receive. This determination, however, cannot be made without consultation with appropriate private school officials. See §298.22 of the final regulations, Appendix B at 9. Moreover, the services provided to the children in private schools must be equitable to those provided to children in public schools. See §298.24 of the final regulations, Appendix B at 9. The services provided to children in private schools must also be feasible and necessary or, under Section 586(a)(1) (Appendix A at 9-10), the LEA must provide other arrangements.

If the LEA does not provide equitable services to children in private schools, the private school should first voice its concerns to the SEA. If those concerns are not resolved, the private school should contact the Department.

131. May an LEA decide what Chapter 2 services it will provide to its public school children and then provide only those services to the children enrolled in private schools?

In accordance with Section 586(a)(1) of Chapter 2 (Appendix A at 9-10) and §298.24(b)(2)(iii) of the final regulations (Appendix B at 9), an LEA must provide Chapter 2 services for the private school children that address their needs, even if those needs are different from the needs of the children enrolled in the public schools.

132. If an LEA restricts its Chapter 2 activities to a grade level or program area, may the LEA restrict the participation of private school children to the same grade level or program area?

Section 586(b) of Chapter 2 (Appendix A at 10) states that when an LEA uses Chapter 2 funds to concentrate on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of the Chapter 2 program. When read in conjunction with the provision in Section 586(a)(1) of Chapter 2 (Appendix A at 9-10) that requires other arrangements if the needs of the private school children are different, it appears that Section 586(b) entitles those private school children with similar needs in the same group, attendance area, or grade or age level to receive Chapter 2 services, but does not excuse the LEA from providing other arrangements to other groups, attendance areas, or grade or age levels if the needs of the private school children are different.

133. If an LEA spends all of its Chapter 2 funds on programs that serve children in public high schools and there are no children in private high schools in the LEA, must the LEA serve other children attending private schools in the LEA?

Under Sections 565(a) (Appendix A at 3) and 586 (Appendix A at 9-11) of Chapter 2, an LEA receives Chapter 2 funds based on the relative enrollment in public and private schools within the LEA and has the responsibility to provide equitable services to the children enrolled in private schools. This responsibility exists, in accordance with Section 586(a)(1) (Appendix A at 9-10), even though there may be no children in private schools at the same grade levels at which children in the public schools are being served.

134. May an LEA use Chapter 2 funds to provide services that supplant the services already being provided by a private school?

No. See §298.25(a) of the final regulations, Appendix B at 9.

135. Is an LEA responsible for monitoring the Chapter 2 programs for children in private schools?

Yes. Under Section 586(a) of Chapter 2 (Appendix A at 9-10), the LEA must ensure that the services, materials, and equipment provided to children in private schools are secular, neutral, and nonideological and that they are used in accordance with all applicable requirements. See §298.21(a)(1) of the final regulations, Appendix B at 8.

136. May Chapter 2 funds be allocated directly to the private schools?

No. Section 586(c)(1) of Chapter 2 (Appendix A at 10) and §298.21(a)(3) of the final regulations (Appendix B at 8) require that the control and administration of Chapter 2 funds must be in a public agency.

137. Must persons providing services to private school children be employees of an LEA?

Section 586(c)(2) (Appendix A at 10) and §298.21(a)(4) of the final regulations (Appendix B at 8-9) require Chapter 2 services to be provided by employees of a public agency or through contract by such public agency with a person, association, agency, or corporation that is independent of the private school and of any religious organizations. Such employment or contract must be under the control and supervision of the public agency. This requirement does not preclude an LEA from hiring private school teachers to provide Chapter 2 services to private school children outside the teachers' regularly scheduled hours.

138. If Chapter 2 funds are used to pay stipends to public school teachers attending Chapter 2 inservice training projects, may Chapter 2 funds also be used to pay stipends to private school teachers attending such projects?

In order to ensure equitable participation of private school teachers under Section 586 (Appendix A at 9-10), Chapter 2 funds should be used to pay stipends to private school teachers attending Chapter 2 inservice training projects if the following conditions exist:

1. There is a genuine need to pay stipends for both public and private school teachers. For example, if the inservice training is conducted during after-school hours or during the summer, the stipend may, in effect, be payment for the participant's time after regular employment hours.

2. The stipends for private school teachers are provided on the same basis as those provided to public school teachers.
3. The stipends must be paid to the private school teacher for the use of the private school teacher and not for the benefit of a private school. A stipend due a private school teacher cannot be transmitted by the public school system, or turned over by the private school teacher, to a private school.

139. May Chapter 2 funds be used to pay for substitute teachers who replace private school teachers attending Chapter 2 training programs?

No. Nothing in Section 586(a) of Chapter 2 (Appendix A at 9-10) authorizes paying with Chapter 2 funds substitute teachers who replace private school teachers attending Chapter 2 training programs. Section 586(a) provides that Chapter 2 funds be used only for services, materials, and equipment for children in private schools, and for training programs for the teachers of such children. That section does not authorize payments to private schools to be used for hiring substitute teachers, even though those substitute teachers are needed because of a Chapter 2 teacher-training program. However, when the participation of private school teachers will be precluded by the private school's inability to pay for substitutes, the LEA should make other arrangements to ensure the equitable participation of those teachers.

140. May an LEA charge the administrative costs for implementing and monitoring activities for private school children to its Chapter 2 account?

Yes. Reasonable administrative costs for providing Chapter 2 services to private school children may be paid from the LEA's Chapter 2 allocation.

141. What disposition should be made of the equipment and materials acquired by LEAs under ESEA Title IV-B that have been placed on the premises of private schools for the benefit of private school children?

The implementation of Chapter 2 does not require SEAs and LEAs to recall equipment and materials loaned for the benefit of private school children under the antecedent programs if those children continue to receive benefits under Chapter 2. Rather, such equipment and materials may remain on private school premises as long as they are needed and are used in accordance with the provisions of Chapter 2. SEAs and LEAs must continue to maintain inventory and control of this equipment.

142. When are the requirements concerning the participation of children in private schools triggered for the Chapter 2 programs carried out with funds reserved for State use?

Section 586(a) of Chapter 2 (Appendix A at 9-10) requires an SEA to provide for the participation, on an equitable basis, of children enrolled in private schools if it conducts instructional or personnel training programs. Therefore, under §298.21(b)(2) of the final regulations (Appendix B at 9), once an SEA decides to conduct such programs, the SEA must comply with the requirements in §§298.21-298.28 of the Chapter 2 regulations concerning the participation of children enrolled in private schools as if the SEA were an LEA. These regulatory provisions include the requirement concerning consultation with private school officials before making any decision that affects the opportunities of private school children or teachers to participate in the Chapter 2 instructional or personnel training programs to be conducted by the SEA.

143. If an SEA uses a portion of the funds reserved for the State's use to award discretionary grants that pertain to instructional or teacher training programs, must the recipients of those grants -- e.g., institutions of higher education -- provide equitable services to children enrolled in private schools?

Yes. An SEA cannot obviate its responsibility to serve children in private schools by awarding discretionary grants to organizations or institutions that otherwise would not have an obligation to serve such children.

144. If an LEA chooses not to apply for Chapter 2 funds, how do private school children in that LEA receive Chapter 2 benefits?

Section 586(a)(2) of Chapter 2 (Appendix A at 10) provides that, if an LEA does not operate a Chapter 2 program, the SEA must make arrangements -- such as through contracts with

nonprofit agencies or organizations -- under which children are provided with services and materials to the extent that would have occurred if the LEA had received Chapter 2 funds. The SEA may pay for these arrangements from the allocation the LEA would have received before the SEA reallocates the remainder of those funds to other LEAs.

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BY-PASS PROCEDURES

Statutory Requirement

See Section 586(d)-(i) of Chapter 2, Appendix A at 10-11.

Regulatory Requirement

See §§298.31-298.36 of the final regulations, Appendix B at 9-10.

Questions and Answers

145. What is a "by-pass"?

By-pass is the term applied to arrangements made by the Secretary to provide services on an equitable basis to private school children when an SEA or LEA is precluded from providing such services by State law, or has substantially failed or is unwilling to provide the services.

146. May private school officials complain directly to the Secretary that their children are not receiving Chapter 2 services on an equitable basis?

Yes, although as a practical matter, any perceived deficiencies in Chapter 2 services to private school children are more easily resolved at the local and/or State level.

147. When the Secretary arranges for a by-pass, from what allocation do the administrative and program funds come?

According to Section 586(g) of Chapter 2 (Appendix A at 11), the Secretary shall pay the costs of providing services to private school children through a by-pass, including the administrative costs of arranging for those services, from the appropriate allotment of the State. The Secretary determines the appropriate allotment according to the reason for the bypass. For example, if the Secretary must establish a by-pass of an entire State because the State is prohibited by law from providing services to private school children, the costs of providing such services will be taken from the State's total Chapter 2 allocation. On the other hand, if the Secretary must establish a by-pass of an LEA because the LEA has substantially failed to provide for the participation of private school children on an equitable basis, the costs of providing such services will be taken from the LEA's Chapter 2 allocation.

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OTHER DUE PROCESS PROCEDURES

Statutory Requirements

See Sections 592-593 of Chapter 2, Appendix A at 12-13;
Sections 451-455 of GEPA, Appendix A at 44-47.

Regulatory Requirements

See §§298.41-298.57 of the final regulations, Appendix B at 10-12.

Questions and Answers

148. Who issues cease and desist complaints?

Unlike final audit determinations and notices of intent to withhold funds, which are issued by the Assistant Secretary for Elementary and Secondary Education, cease and desist complaints will only be issued by the Secretary. See §298.45(c) of the final regulations, Appendix B at 11. Before the Secretary issues a complaint, he will make every reasonable effort to discuss the circumstances giving rise to the complaint with the SEA and afford the SEA an opportunity to explain its position.

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INSULAR AREAS

Statutory Requirement

See Section 563(a) of Chapter 2, Appendix A at 2.

Regulatory Requirement

See §298.5(a)(1) of the final regulations, Appendix B at 6.

Questions and Answers

149. Are the insular areas eligible for funding under Chapter 2 for programs for which they were previously not eligible (e.g., ESAA, Special Projects, etc.) or for which they have not previously applied?

Yes. Section 563(a) of Chapter 2 (Appendix A at 2) authorizes the Secretary to reserve, from the funds appropriated for Chapter 2, a sum not to exceed one percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. These funds will be allotted to the insular areas in accordance with their respective needs. The insular areas may spend these funds for any of the purposes authorized under Chapter 2, irrespective of whether they were eligible to apply for funds for such purposes under the antecedent programs.

150. How will the Secretary determine the "respective needs" of the insular areas?

See §298.5(a) of the final regulations, Appendix B at 6.

151. If there were advance expenses (e.g., for State Advisory Committee meetings), could these expenses have been reimbursed from Chapter 2 funds?

Yes. As indicated in the preamble of the final regulations (Appendix B at 1), pre-award costs could have been paid from available resources and those accounts reimbursed after July 1, 1982 from the State's Chapter 2 account. Also, these costs could have been paid from funds appropriated in Fiscal Year 1981 to implement Title V-B of the Elementary and Secondary Education Act of 1965.

152. What is the relationship of the Territorial Consolidation Act to the ECIA? Will the regulations governing the Territorial Consolidation Act be amended to name Chapter 2 of the ECIA in place of the programs that are being consolidated?

The regulations governing Public Law 95-134 - the Consolidated Grant Application for Insular Areas - are being revised to delete those programs consolidated under Chapter 2 and to include the provisions of Chapter 2. Therefore, programs under Chapter 2 may be consolidated along with other programs authorized under the Consolidated Grant Application for Insular Areas.

* * * * *

APPLICABILITY OF OTHER STATUTES AND REGULATIONS

In general, see the preamble of the final regulations, Appendix B at 3-4.

Questions and Answers

153. What is the status of the Chapter 2 regulations published on July 29, 1982?

For the period between August 12, 1982 (the date on which the July 29 Chapter 2 regulations took effect) and January 12, 1983 (the date on which the revised final Chapter 2 regulations took effect), SEAs and LEAs are expected to have administered their Chapter 2 programs in conformity with the applicable statutory provisions and the regulations published on July 29.

154. Does the General Education Provisions Act (GEPA) apply to Chapter 2?

Yes, subject to specific exceptions, GEPA applies to the Chapter 2 program. The exceptions relate to particular sections of GEPA that are inapplicable as a matter of law because they are expressly made inapplicable by the ECIA, because they are superseded by particular ECIA provisions, or for other reasons explained in the preamble of the final regulations (Appendix B at 3).

The inapplicable GEPA sections, which are described in the preamble of the final regulations, are: (a) Section 408(a)(1), authorizing the Secretary to promulgate regulations; (b) Section 425, concerning review of certain SEA actions; (c) Section 426(a), concerning technical assistance; (d) Section 427, concerning parental participation; (e) Section 430, concerning applications for assistance; (f) Section 431A, concerning maintenance of effort determinations; (g) Section 434, except subsection (a)(2) thereof, concerning SEA monitoring and enforcement; (h) Section 435, except subsections (b)(2) and (b)(5) thereof, concerning single State applications; (i) Section 436, except subsections (b)(2) and (b)(3) thereof, concerning single LEA applications; (j) Section 437(b), relating to access to records; (k) Section 453, relating to withholding of funds; and (l) Section 455, concerning judicial review, to the extent it applies to withholding actions under Chapter 2.

155. Are there other sections of GEPA that technically are applicable to Chapter 2 but that by their own terms concern subject matter that is unrelated to Chapter 2?

A number of GEPA provisions are unrelated to Chapter 2. These include, for example, provisions concerning internal Department organization that have been superseded by the Department of Education Organization Act, authorizations of other agencies and programs, such as the authorizations for the National Institute of Education and the National Center for Education Statistics, and provisions concerning federal advisory councils.

The GEPA provisions unrelated to Chapter 2 are: (a) Sections 401, 402, and 403 concerning the previous Education Division of the Department of Health, Education, and Welfare and its officers and units; (b) Section 405, concerning the National Institute of Education; (c) Section 406, concerning the National Center for Education Statistics; (d) that Section 406A authorizing appropriations for science education programs; (e) Section 407, concerning rules for education officers of the United States; (f) Section 421, concerning the applicability of Part C of GEPA; (g) Section 424, concerning a compilation of assisted innovative projects; (h) Section 426(c), concerning awards for curriculum development; (i) Section 426A, concerning equalization assistance; and (j) Sections 441-449, concerning advisory councils.

156. What GEPA provisions do apply to Chapter 2?

GEPA provisions that both are legally applicable to Chapter 2 and contain subject matter related to Chapter 2 may be classified in three categories: (1) provisions that impose administrative responsibilities on the Department in administering Chapter 2 but that do not affect the rights or responsibilities of award recipients; (2) provisions that confer rights or possible opportunities on award recipients or that limit the Department's authority in taking actions affecting award recipients; and (3) provisions that impose requirements or duties on award recipients. In some instances, particular provisions may be deemed to fall under more than one of these categories. However, the following lists attempt to classify the sections according to their predominant characteristics.

GEPA provisions that impose administrative responsibilities on the Department in administering Chapter 2 but that do not affect the rights or responsibilities of award recipients include: (a) Section 400, concerning definitions, applicability, and appropriations; (b) Section 408(a)(2)-(6), (b), (c), and (d), concerning administrative authorities of education officials; (c) Section 409, concerning educational impact statements for regulations affecting institutions of higher education; (d) Section 411, concerning advance appropriations for programs; (e) Section 413, concerning the availability of appropriations; (f) Section 414, concerning contingent extension of program authorizations; (g) Section 415, concerning payment methods; (h) Section 416, authorizing planning and evaluation by the Secretary; (i) Section 417, requiring annual evaluation reports; (j) Section 418, requiring reports related to the possible renewal of expiring programs; (k) Section 419, concerning program evaluation by the Comptroller General; (l) Section 421A, regarding the administration of programs by the Secretary; (m) Sections 422 and 426(d), concerning collection and dissemination of information and an annual report; (n) Section 423, concerning a catalog of federal education assistance programs; (o) Section 428, concerning use of funds withheld for failure of an LEA to comply with Title VI of the Civil Rights Act of 1964; (p) Section 429, authorizing the Secretary to furnish information to the public; and (q) Section 431, concerning the issuance of regulations by the Secretary.

GEPA provisions that specifically confer rights or possible opportunities on award recipients or that limit the Department's authority in taking actions affecting award recipients include: (a) Section 400A, concerning paperwork control;

(b) Section 426(b), concerning use by LEAs of systematic cost allocation methods; (c) Section 432, prohibiting federal control of education; (d) Section 440(a), limiting federal authority to terminate or suspend funds for refusals to provide personally identifiable data; (e) Section 440(b), providing due process procedures for sanctions under nondiscrimination provisions of federal law; (f) Section 440(c), prohibiting the imposition of quotas; (g) Section 451, concerning the Education Appeal Board; (h) Section 452, concerning audit determinations; (i) Section 454, concerning cease and desist orders; (j) Section 455, concerning judicial review of certain determinations (except with regard to withholding actions); and (k) Section 456, authorizing "grant-back" of funds recovered following an audit determination.

GEPA provisions that impose requirements or duties on award recipients include: (a) that Section 406A which imposes responsibilities on States to furnish information; (b) Section 412, concerning the period of availability of appropriated funds; (c) Section 420, prohibiting use of appropriated funds for busing; (d) Section 433, concerning application of the Davis-Bacon Act regarding wages in construction and minor remodeling projects; (e) Sections 434(a)(2), 435(b)(2) and (b)(5), and 436(b)(2) and (b)(3), concerning fiscal control and fund accounting procedures; (f) Section 437(a), concerning records; (g) Section 438, concerning the privacy and related rights of parents and students regarding student records; (h) Section 439(a), concerning the availability for parental inspection of instructional material used in research or experimentation programs; and (i) Section 439(b), forbidding requirements that students submit to psychiatric or psychological testing or treatment designed to elicit particular information.

CLOSEOUT ACTIVITIES

Statutory Requirement

See Section 587 of Chapter 2, Appendix A at 12.

Removal of Regulatory Requirements

On August 25, 1981, the Department published a notice in the Federal Register amending Title 34 of the Code of Federal Regulations to remove those regulations that became obsolete on October 1, 1982 as a result of the consolidation of certain categorical education programs into Chapter 2. See 46 Fed. Reg. 42847-48 (1981). As the notice states, "[s]ubject to the provisions of the Omnibus Education Reconciliation Act of 1981, grants awarded by the Department of Education before October 1, 1982, are subject to the regulations in effect at the time the grants were made." Id. at 42847

The following regulations were removed from Title 34 of the Code of Federal Regulations effective October 1, 1982:

- Part 208 - Strengthening State Educational Agency Management
- Part 209 - Administration of Education Programs and Duties of the State Educational Agency
- Part 240 - Teacher Centers Program
- Part 280 - Emergency School Aid
- Part 295 - Career Education, State Allotment Program
- Part 296 - Career Education, Discretionary Programs
- Part 345 - Gifted and Talented Children's Education Program: General
- Part 346 - Gifted and Talented Children's Education: State-Administered Program
- Part 347 - Gifted and Talented Children's Education Program: Discretionary Grant Program
- Part 410 - Youth Employment Program
- Part 440 - Community Schools and Comprehensive Community Education Program
- Part 441 - Community Education: State Program
- Part 442 - Community Education: Grants to Local Educational Agencies

- Part 443 - Community Education: Grants to Public Agencies and Nonprofit Private Corporations
- Part 444 - Community Education: Training Grants to Institutions of Higher Education
- Part 647 - Biomedical Sciences Program
- Part 752 - Metric Education Program
- Part 753 - Arts Education Program
- Part 755 - Consumers' Education Program
- Part 757 - Law-Related Education
- Part 758 - Financial Assistance for Environmental Education Projects
- Part 763 - Population Education Program
- Part 765 - Basic Skills Improvement and Educational Proficiency
- Part 766 - National Basic Skills Improvement
- Part 767 - State Basic Skills Improvement
- Part 768 - Educational Proficiency
- Part 769 - Ethnic Heritage Studies Program
- Part 774 - Grants to State Educational Agencies for Educational Improvement, Resources, and Support
- Part 793 - Teacher Corps
- Part 797 - Pre-College Teacher Development in Science Program

Questions and Answers

157. When did the statutory and regulatory requirements governing the categorical programs that were consolidated into Chapter 2 end?

As indicated in Section 587 of Chapter 2 (Appendix A at 12), with the exception of the Follow-Through program, the provisions of the categorical programs that were consolidated into Chapter 2 were repealed effective October 1, 1982. Likewise, as indicated in the notice published on August 25, 1981 in the Federal Register, the regulations governing those programs were removed from Title 34 of the Code of Federal Regulations effective October 1, 1982. Thus, both the statutory and regulatory requirements governing the categorical programs that were consolidated into Chapter 2 were repealed as of October 1, 1982.

For the funds from the antecedent categorical programs that SEAs and LEAs obligated prior to July 1, 1982, SEAs and LEAs were to continue to adhere to the statutory and regulatory requirements in effect at the time the grants were made. These requirements were to be adhered to for the duration of the grant, even if it extended beyond October 1, 1982. However, as indicated in Section 514(b) (2)(B) of the Omnibus Education Reconciliation Act of 1981

(Appendix A at 15) and the preamble of the final regulations (Appendix B at 4), SEAs and LEAs were to expend and use any funds from the antecedent programs that remained unobligated as of July 1, 1982 in accordance with Chapter 2. Although this provision did not require SEAs and LEAs to alter their activities -- because all of the activities authorized under the antecedent programs are also authorized under Chapter 2 -- the provision did require SEAs and LEAs to expend and use those funds in accordance with the more flexible requirements of Chapter 2 beginning on July 1, 1982. Thus, with regard to any unobligated funds from the antecedent programs, the statutory and regulatory requirements of the antecedent programs ended on July 1, 1982.

Because Section 514(b)(2)(B) only pertains to SEAs and LEAs, any other public and private agencies, organizations, and institutions that received grants, subgrants, or contracts under the antecedent programs were not affected by Section 514. Therefore, such grantees, subgrantees, or contractors were to continue to operate their grants or contracts according to the statutory and regulatory requirements in effect at the time the grants or contracts were made. As a result, the statutory and regulatory requirements of the antecedent programs apply for the duration of the grant or contract, even if it extends beyond October 1, 1982. See generally questions 78-83.

APPENDIX A

EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

CHAPTER 2—CONSOLIDATION OF FEDERAL PROGRAMS FOR ELEMENTARY AND SECONDARY EDUCATION

STATEMENT OF PURPOSE

SEC. 561. (a) It is the purpose of this chapter to consolidate the program authorizations contained in—

(1) titles II, III, IV, V, VI, VIII, and IX (except part C) of the Elementary and Secondary Education Act of 1965;

(2) the Alcohol and Drug Abuse Education Act;

(3) part A and section 532 of title V of the Higher Education Act of 1965;

(4) the Follow Through Act (on a phased basis);

(5) section 3(a)(1) of the National Science Foundation Act of 1950 relating to precollege science teacher training; and

(6) the Career Education Incentive Act;

into a single authorization of grants to States for the same purposes set forth in the provisions of law specified in this sentence, but to be used in accordance with the educational needs and priorities of State and local educational agencies as determined by such agencies. It is the further purpose and intent of Congress to financially assist State and local educational agencies to improve elementary and secondary education (including preschool education) for children attending both public and private schools, and to do so in a manner designed to greatly reduce the enormous administrative and paperwork burden imposed on schools at the expense of their ability to educate children.

(b) The basic responsibility for the administration of funds made available under this chapter is in the State educational agencies, but it is the intent of Congress that this responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under the chapter shall be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel, because they have the most direct contact with students and are most directly responsible to parents.

20 USC 3811.

20 USC 2881,
2941, 3081, 3141,
3191, 3231, 3311,
3341.

21 USC 1001

note.

20 USC 1101.

1119a.

Pub. L. 508.

42 USC 1862

20 USC 2601

note.

AUTHORIZATION OF APPROPRIATIONS; DURATION OF ASSISTANCE

SEC. 562. (a) There are authorized to be appropriated such sums as may be necessary for fiscal year 1982 and each of the five succeeding fiscal years to carry out the provisions of this chapter.

20 USC 3812.

(b) During the period beginning July 1, 1982, and ending September 30, 1987, the Secretary shall, in accordance with the provisions of this subtitle, make payments to State educational agencies for the purposes of this chapter.

Am. p. 445.

(c) Funds available under previously authorized programs shall be available for the purpose of such payments in accordance with section 514(b)(2) of the Omnibus Education Reconciliation Act of 1981.

ALLOTMENTS TO STATES

20 USC 381K

SEC. 563. (a) From the sums appropriated to carry out this chapter in any fiscal year, the Secretary shall reserve not to exceed 1 per centum for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs. The Secretary shall reserve an additional amount, not to exceed 6 per centum of the sums appropriated, to carry out the purposes of section 563. From the remainder of such sums the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the school-age population of the State bears to the school-age population of all States, except that no State shall receive less than an amount equal to 0.5 per centum of such remainder.

"School-age
population."
"States."

(b) For the purposes of this section:

(1) The term "school-age population" means the population aged five through seventeen.

(2) The term "States" includes the fifty States, the District of Columbia, and Puerto Rico.

STATE APPLICATIONS

20 USC 3814.

SEC. 564. (a) Any State which desires to receive grants under this chapter shall file an application with the Secretary which—

(1) designates the State educational agency as the State agency responsible for the administration and supervision of programs assisted under this chapter;

(2) provides for a process of active and continuing consultation with the State educational agency of an advisory committee, appointed by the Governor and determined by the Governor to be broadly representative of the educational interests and the general public in the State, including persons representative of—

(A) public and private elementary and secondary schoolchildren;

(B) classroom teachers;

(C) parents of elementary and secondary schoolchildren;

(D) local boards of education;

(E) local and regional school administrators (including principals and superintendents);

(F) institutions of higher education; and

(G) the State legislature;

to advise the State educational agency on the allocation among authorized functions of funds (not to exceed 20 per centum of the amount of the State's allotment) reserved for State use under section 565(a), on the formula for the allocation of funds to local educational agencies, and on the planning, development, support, implementation, and evaluation of State programs assisted under this chapter;

(3) sets forth the planned allocation of funds reserved for State use under section 565(a) among subchapters A, B, and C of this

Post. pp. 472, 473,
475.

chapter and among the authorized programs and projects which are to be implemented, and the allocation of such funds required to implement section 586, including administrative costs of carrying out the responsibilities of the State educational agency under this chapter;

(4) provides for timely public notice and public dissemination of the information provided pursuant to paragraphs (2) and (3);

(5) beginning with fiscal year 1984, provides for an annual evaluation of the effectiveness of programs assisted under this chapter, which shall include comments of the advisory committee, and shall be made available to the public; and

(6) provides that the State educational agency will keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this chapter); and

(7) contains assurances that there is compliance with the specific requirements of this chapter.

(b) An application filed by the State under subsection (a) shall be for a period not to exceed three fiscal years, and may be amended annually as may be necessary to reflect changes without filing a new application.

Recordkeeping.

ALLOCATION TO LOCAL EDUCATIONAL AGENCIES

Sec. 565. (a) From the sum made available each year under section 563, the State educational agency shall distribute not less than 80 per centum to local educational agencies within such State according to the relative enrollments in public and nonpublic schools within the school districts of such agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as—

20 USC 3815.

(1) children from low-income families,

(2) children living in economically depressed urban and rural areas, and

(3) children living in sparsely populated areas.

(b) The Secretary shall approve criteria suggested by the State educational agency for adjusting allocations under subsection (a) if such criteria are reasonably calculated to produce an equitable distribution of funds with reference to the factors set forth in subsection (a).

(c) From the funds paid to it pursuant to sections 563 and 564 during each fiscal year, the State educational agency shall distribute to each local educational agency which has submitted an application as required in section 566 the amount of its allocation as determined under subsection (a).

LOCAL APPLICATIONS

Sec. 566. (a) A local educational agency may receive its allocation of funds under this chapter for any year in which it has on file with the State educational agency an application which—

20 USC 3816.

(1) sets forth the planned allocation of funds among subchapters A, B, and C of this chapter and for the programs authorized by such subchapters which it intends to support, including the allocation of such funds required to implement section 586;

Post, pp. 472, 473, 475.

Recordkeeping.

(2) provides assurances of compliance with provisions of this chapter relating to such programs, including the participation of children enrolled in private, nonprofit schools in accordance with section 586;

(3) agrees to keep such records, and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this chapter; and

(4) in the allocation of funds for programs authorized by this chapter, and in the design, planning, and implementation of such programs, provides for systematic consultation with parents of children attending elementary and secondary schools in the area served by the local agency, with teachers and administrative personnel in such schools, and with other groups as may be deemed appropriate by the local educational agency.

(b) An application filed by a local educational agency under subsection (a) shall be for a period not to exceed three fiscal years, may provide for the allocation of funds among programs and purposes authorized by this chapter for a period of three years, and may be amended annually as may be necessary to reflect changes without filing a new application.

(c) Each local educational agency shall have complete discretion, subject only to the provisions of this chapter, in determining how funds the agency receives under this section shall be divided among the purposes of this chapter in accordance with the application submitted under this section.

Subchapter A—Basic Skills Development**USE OF FUNDS**

20 USC 3521.

SEC. 571. Funds allocated for use under this subchapter shall be used by State and local educational agencies to develop and implement a comprehensive and coordinated program designed to improve elementary and secondary school instruction in the basic skills of reading, mathematics, and written and oral communication, as formerly authorized by title II of the Elementary and Secondary Education Act of 1965, relating to basic skills improvement, including the special mathematics program as formerly authorized by section 232 of such title.

20 USC 2391.

20 USC 2312.

STATE LEADERSHIP AND SUPPORT SERVICES

Grants and
contracts.
20 USC 3822.

SEC. 572. (a) In order to achieve the purposes of this subchapter, State educational agencies may use funds reserved for State programs to make grants to and enter into contracts with local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions—

(1) to carry out planning, research and development, demonstration projects, training of leadership personnel, short term and regular session teacher training institutes; and

(2) for the development of instructional materials, the dissemination of information, and technical assistance to local educational agencies.

Each State educational agency may also use such funds for technical assistance and training for State boards of education.

(b) State educational agencies may support activities designed to enlist the assistance of parents and volunteers working with schools

to improve the performance of children in the basic skills. Such activities may include—

- (1) the development and dissemination of materials that parents may use in the home to improve their children's performance in those skills; and
- (2) voluntary training activities for parents to encourage and assist them to help their children in developing basic skills; except that such activities conducted in local areas shall be conducted with the approval of and in conjunction with programs of local educational agencies.

SCHOOL LEVEL PROGRAMS

SEC. 573. (a) In planning for the utilization of funds it allocates for this chapter (from its allotment under section 565) a local educational agency shall provide for the participation of children enrolled in private elementary and secondary schools (and of teachers in such schools) in accordance with section 586. Such plans shall be developed in conjunction with and involve continuing consultation with teachers and principals in such district. Such planning shall include a systematic strategy for improving basic skills instruction for all children which provides for planning and implementation at the school building level, involving teachers, administrators, and (to the extent practicable) parents, and utilizing all available resources in a comprehensive program. The programs shall include—

- (1) diagnostic assessment to identify the needs of all children in the school;
 - (2) the establishment of learning goals and objectives for children and for the school;
 - (3) to the extent practicable, pre-service and in-service training and development programs for teachers, administrators, teacher aides and other support personnel, designed to improve instruction in the basic skills;
 - (4) activities designed to enlist the support and participation of parents to aid in the instruction of their children; and
 - (5) procedures for testing students and for evaluation of the effectiveness of programs for maintaining a continuity of effort for individual children.
- (b) The programs described in subsection (a) may include such areawide or districtwide activities as learning centers accessible to students and parents, demonstration and training programs for parents, and other activities designed to promote more effective instruction in the basic skills.

Subchapter B—Educational Improvement and Support Services

STATEMENT OF PURPOSE

SEC. 576. It is the purpose of this subchapter to permit State and local educational agencies to use Federal funds (directly, and through grants to or contracts with educational agencies, local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions) to carry out selected activities from among the full range of programs and projects formerly authorized under title IV, relating to educational improvement, resources, and support, title V, relating to State leadership, title VI, relating to emergency school aid, of the Elementary and Secondary Education Act of 1965, section 3(a)(1) of the National

20 USC 3823.

20 USC 3831.

20 USC 3081.

20 USC 3141.

20 USC 3191.

42 USC 1862

20 USC 1101,
1119a.

Science Foundation Act of 1950, relating to precollege science teacher training, and part A and section 532 of title V of the Higher Education Act of 1965, relating to the Teacher Corps and teacher centers, in accordance with the planned allocation of funds set forth in the applications under sections 564 and 566, in conformity with the other requirements of this chapter.

APPROPRIATE ACTIVITIES

20 USC 3832

Sec. 577. Programs and projects authorized under this subchapter include—

(1) the acquisition and utilization—

(A) of school library resources, textbooks, and other printed and published instructional materials for the use of children and teachers in public and private elementary and secondary schools which shall be used for instructional purposes only, and

(B) of instructional equipment and materials suitable for use in providing education in academic subjects for use by children and teachers in elementary and secondary schools which shall be used for instructional purposes only,

which take into account the needs of children in both public and private schools based upon periodic consultation with teachers, librarians, media specialists, and private school officials;

(2) the development of programs designed to improve local educational practices in elementary and secondary schools, and particularly activities designed to address educational problems such as the education of children with special needs (educationally deprived children, gifted and talented children, including children in private schools);

(3) programs designed to assist local educational agencies, upon their request, to more effectively address educational problems caused by the isolation or concentration of minority group children in certain schools if such assistance is not conditioned upon any requirement that a local educational agency which assigns students to schools on the basis of geographic attendance areas adopt any other method of student assignment, and that such assistance is not made available for the transportation of students or teachers or for the acquisition of equipment for such transportation;

(4) comprehensive guidance, counseling, and testing programs in elementary and secondary schools and State and local support services necessary for the effective implementation and evaluation of such programs (including those designed to help prepare students for employment);

(5) programs and projects to improve the planning, management and implementation of educational programs, including fiscal management, by both State and local educational agencies, and the cooperation of such agencies with other public agencies;

(6) programs and projects to assist in teacher training and in-service staff development, particularly to better prepare both new and in-service personnel to deal with contemporary teaching and learning requirements and to provide assistance in the teaching and learning of educationally deprived students; and

(7) programs and projects to assist local educational agencies to meet the needs of children in schools undergoing desegregation and to assist such agencies to develop and implement plans for desegregation in the schools of such agencies.

Subchapter C—Special Projects

STATEMENT OF PURPOSE

SEC. 581. It is the purpose of this subchapter to permit State and local educational agencies to use Federal funds (directly and through grants to or contracts with educational agencies, local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions) to carry out selected activities from among the full range of programs and projects formerly authorized under title III, relating to special projects, title VIII, relating to community schools, and title IX (except part C), relating to gifted and talented children, educational proficiency standards, safe schools program, and ethnic heritage program, of the Elementary and Secondary Education Act of 1965, the Career Education Incentive Act, and part B of title V of the Economic Opportunity Act of 1964, relating to Follow Through programs, in accordance with the planned allocation of funds set forth in the applications under sections 564 and 566, in conformity with the other requirements of this chapter.

20 USC 3341.

20 USC 2941,
3251, 3311.
20 USC 2601
note.
42 USC 2929.

AUTHORIZED ACTIVITIES

SEC. 582. Programs and projects authorized under this subchapter include—

20 USC 3842.

(1) special projects (as may be determined to be desirable by the State or local educational agencies) in such areas as—

(A) preparation of students to use metric weights and measurements when such use is needed;

(B) emphasis on the arts as an integral part of the curriculum;

(C)(i) in-school partnership programs in which the parents of school-age children participate to enhance the education and personal development of the children, previously authorized by part B of the Headstart-Follow Through Act;

42 USC 2929.

(ii) preschool partnership programs in which the schools work with parents of preschool children in cooperation with programs funded under the Headstart-Follow Through Act;

42 USC 2921.

(D) consumer education;

(E) preparation for employment, the relationship between basic academic skill development and work experience, and coordination with youth employment programs carried out under the Comprehensive Employment and Training Act;

(F) career education previously authorized by the Career Education Incentive Act;

(G) environmental education, health education, education about legal institutions and the American system of law and its underlying principles, and studies on population and the effects of population changes;

(H) academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders; and

(I) programs to introduce disadvantaged secondary school students to the possibilities of careers in the biomedical and medical sciences, and to encourage, motivate, and assist them in the pursuit of such careers;

(2) the use of public education facilities as community centers operated by a local education agency in conjunction with other local governmental agencies and community organizations and groups to provide educational, recreational, health care, cul-

tural, and other related community and human services for the community served in accordance with the needs, interests, and concerns of the community and the agreement and conditions of the governing board of the local educational agency; and

(3) additional programs, including—

(A) special programs to identify, encourage, and meet the special educational needs of children who give evidence of high performance capability in areas such as intellectual, creative, artistic, leadership capacity, or specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities;

(B) establishment of educational proficiency standards for reading, writing, mathematics, or other subjects, the administration of examinations to measure the proficiency of students, and implementation of programs (coordinated with those under subchapter A of this chapter) designed to assist students in achieving levels of proficiency comparable with established standards;

(C) programs designed to promote safety in the schools and to reduce the incidence of crime and vandalism in the school environment;

(D) planning, developing, and implementing ethnic heritage studies programs to provide all persons with an opportunity to learn about and appreciate the unique contributions to the American national heritage made by the various ethnic groups, and to enable students better to understand their own cultural heritage as well as the cultural heritage of others; and

(E) programs involving training and advisory services under title IV of the Civil Rights Act of 1964.

Ansa, p. 472.

42 USC 2000e.

Subchapter D—Secretary's Discretionary Funds

DISCRETIONARY PROGRAM AUTHORIZED

20 USC 3851.

Sec. 553. (a) From the sums reserved by the Secretary pursuant to the second sentence of section 553(a) the Secretary is authorized to carry out directly or through grants to or contracts with State and local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions, programs and projects which—

(1) provide a national source for gathering and disseminating information on the effectiveness of programs designed to meet the special educational needs of educationally deprived children, and others served by this subtitle, and for assessing the needs of such individuals, including programs and projects formerly authorized by section 316 of the Elementary and Secondary Education Act of 1965 and programs and projects formerly funded under the "National Diffusion Network" program;

20 USC 3041.

(2) carry out research and demonstrations related to the purposes of this subtitle;

(3) are designed to improve the training of teachers and other instructional personnel needed to carry out the purposes of this subtitle; and

(4) are designed to assist State and local educational agencies in the implementation of programs under this subtitle.

(b) From the funds reserved for the purposes of this section, the Secretary shall first fund—

(1) the Inexpensive Book Distribution Program (as carried out through "Reading is Fundamental") as formerly authorized by part C of title II of the Elementary and Secondary Education Act of 1965,

20 USC 2911.

(2) the programs of national significance in the "Arts in Education" Program as formerly authorized by part C of title III of such Act, and

(3) programs in alcohol and drug abuse education as formerly authorized by the Alcohol and Drug Abuse Education Act, at least in amounts necessary to sustain the activities described in this sentence at the level of operations during fiscal year 1981, and then utilize the remainder of such funds for the other authorized activities described in subsection (a).

21 USC 1001
note.

Subchapter E—General Provisions

MAINTENANCE OF EFFORT; FEDERAL FUNDS SUPPLEMENTARY

SEC. 585. (a)(1) Except as provided in paragraph (2), a State is entitled to receive its full allocation of funds under this chapter for any fiscal year if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year was not less than 90 per centum of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

20 USC 3861.

(2) The Secretary shall reduce the amount of the allocation of funds under this chapter in any fiscal year in the exact proportion to which the State fails to meet the requirements of paragraph (1) by falling below 90 per centum of both the fiscal effort per student and aggregate expenditures (using the measure most favorable to the State), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) The Secretary may waive, for one fiscal year only, the requirements of this subsection if he determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

Waiver of
requirements.

(b) A State or local educational agency may use and allocate funds received under this chapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under this chapter, be made available from non-Federal sources, and in no case may such funds be used so as to supplant funds from non-Federal sources.

(c) The Secretary is specifically authorized to issue regulations to enforce the provisions of this section.

Regulations.

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

SEC. 586. (a)(1) To the extent consistent with the number of children in the school district of a local educational agency which is eligible to receive funds under this chapter or which serves the area in which a program or project assisted under this chapter is located who are enrolled in private nonprofit elementary and secondary schools, or with respect to instructional or personnel training programs funded by the State educational agency from funds reserved for State use

20 USC 3862.

under section 553, such agency after consultation with appropriate private school officials, shall provide for the benefit of such children in such schools secular, neutral, and nonideological services, materials, and equipment including the participation of the teachers of such children (and other educational personnel serving such children) in training programs, and the repair, minor remodeling, or construction of public facilities as may be necessary for their provision (consistent with subsection (c) of this section), or, if such service, materials, and equipment are not feasible or necessary in one or more such private schools as determined by the local educational agency after consultation with the appropriate private school officials, shall provide such other arrangements as will assure equitable participation of such children in the purposes and benefits of this chapter.

Contract
authority.

(2) If no program or project is carried out under subsection (a)(1) of this section in the school district of a local educational agency, the State educational agency shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in that district are provided with services and materials to the extent that would have occurred if the local educational agency had received funds under this chapter.

(3) The requirements of this section relating to the participation of children, teachers, and other personnel serving such children shall apply to programs and projects carried out under this chapter by a State or local educational agency, whether directly or through grants to or contracts with other public or private agencies, institutions, or organizations.

(b) Expenditures for programs pursuant to subsection (a) shall be equal (consistent with the number of children to be served) to expenditures for programs under this chapter for children enrolled in the public schools of the local educational agency, taking into account the needs of the individual children and other factors which relate to such expenditures, and when funds available to a local educational agency under this chapter are used to concentrate programs or projects on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of such programs or projects.

(c)(1) The control of funds provided under this chapter and title to materials, equipment, and property repaired, remodeled, or constructed therewith shall be in a public agency for the uses and purposes provided in this chapter, and a public agency shall administer such funds and property.

(2) The provision of services pursuant to this section shall be provided by employees of a public agency or through contract by such public agency with a person, an association, agency, or corporation who or which, in the provision of such services, is independent of such private school and of any religious organizations, and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this chapter shall not be commingled with State or local funds.

Waiver of
requirements.

(d) If by reason of any provision of law a State or local educational agency is prohibited from providing for the participation in programs of children enrolled in private elementary and secondary schools, as required by this section, the Secretary shall waive such requirements and shall arrange for the provision of services to such children

through arrangements which shall be subject to the requirements of this section.

(e)(1) If the Secretary determines that a State or a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in private elementary and secondary schools as required by this section, he may waive such requirements and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

Waiver of
requirements.

(2) Pending final resolution of any investigation or complaint that could result in a determination under this subsection or subsection (d), the Secretary may withhold from the allocation of the affected State or local educational agency the amount he estimated would be necessary to pay the cost of those services.

(f) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State or local educational agency to meet the requirements of subsections (a) and (b).

(g) When the Secretary arranges for services pursuant to this section, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allotment of the State under this chapter.

(h)(1) The Secretary shall not take any final action under this section until the State educational agency and the local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why that action should not be taken.

(2) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under paragraph (1) of this subsection, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based this action, as provided in section 2112 of title 28, United States Code.

(3) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(4) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(i) Any bypass determination by the Secretary under titles II through VI and VIII and IX of the Elementary and Secondary Education Act of 1965 prior to the effective date of this chapter shall remain in effect to the extent consistent with the purposes of this chapter.

20 USC 2381.
3191, 3231, 3311.

REPEALS

29 USC 2831,
2941, 3081, 3141,
3191, 3231, 3311,
3341.
20 USC 1101,
1119a.
21 USC 1001.
note.
20 USC 2601.
note.
Post, p. 508.

SEC. 587. (a) Effective October 1, 1982, the provisions of—
 (1) titles II, III, IV, V, VI, VIII, and IX (except part C) of the Elementary and Secondary Education Act of 1965;
 (2) part A and section 532 of title V of the Higher Education Act of 1965;
 (3) the Alcohol and Drug Abuse Education Act; and
 (4) the Career Education Incentive Act;
 are repealed.
 (b) Effective October 1, 1984, subchapter C of chapter 8 of subtitle A of title VI of this Act, relating to Follow-Through programs is repealed.

CHAPTER 3—GENERAL PROVISIONS

FEDERAL REGULATIONS

20 USC 3871.

SEC. 591. (a) The Secretary is authorized to issue regulations—
 (1) relating to the discharge of duties specifically assigned to the Secretary under this subtitle;
 (2) relating to proper fiscal accounting for funds appropriated under this subtitle and the method of making payments authorized under this subtitle; and
 (3) which are deemed necessary to reasonably insure that there is compliance with the specific requirements and assurances required by this subtitle.
 (b) In all other matters relating to the details of planning, developing, implementing, and evaluating programs and projects by State and local educational agencies the Secretary shall not issue regulations, but may consult with appropriate State, local, and private educational agencies and, upon request, provide technical assistance, information, and suggested guidelines designed to promote the development and implementation of effective instructional programs and to otherwise assist in carrying out the purposes of this subtitle.
 (c) Regulations issued pursuant to this subtitle shall not have the standing of a Federal statute for the purposes of judicial review.

WITHHOLDING OF PAYMENTS

20 USC 3872.

SEC. 592. (a) Whenever the Secretary after reasonable notice to any State educational agency and an opportunity for a hearing on the record, finds that there has been a failure to comply substantially with any assurances required to be given or conditions required to be met under this subtitle the Secretary shall notify such agency of these findings and that beginning sixty days after the date of such notification, further payments will not be made to the State under this subtitle, or affected chapter thereof (or, in his discretion, that the State educational agency shall reduce or terminate further payments under the subtitle or affected chapter thereof, to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, (1) no further payments shall be made to the State under the subtitle or affected chapter thereof, or (2) payments by the State educational agency under the subtitle or affected chapter thereof shall be limited to local educational agencies and State agencies not affected by the failure, or (3) payments to particular local educational agencies shall be reduced, as the case may be.

(b) Upon submission to a State of a notice under subsection (a) that the Secretary is withholding payments, the Secretary shall take such action as may be necessary to bring his action to the attention of the public within the State.

JUDICIAL REVIEW

SEC. 593. (a) If any State is dissatisfied with the Secretary's action under section 592(a), such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall act to suspend any withholding of funds by the Secretary pending the judgment of the court and prior to a final action on any review of such judgment. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. 20 USC 3873.

(b) A State educational agency shall be presumed to have complied with this subtitle, but the findings of fact by the Secretary, if supported by the weight of evidence, may overcome such presumption. The court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings.

(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

AVAILABILITY OF APPROPRIATIONS

SEC. 594. Notwithstanding any other provision of law, unless expressly in limitation of this section, funds appropriated in any fiscal year to carry out activities under this subtitle shall become available for obligation on July 1 of such fiscal year and shall remain available for obligation until the end of the succeeding fiscal year. 20 USC 3874.

DEFINITIONS

SEC. 595. (a) Except as otherwise provided herein as used in this subtitle— 20 USC 3875.

(1) the term "State" means a State, Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands;

(2) the term "Secretary" means the Secretary of Education;

(3) the term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools;

(4) the term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having

administrative control and direction of a public elementary or secondary school;

(5) the term "parent" includes a legal guardian or other person standing in loco parentis;

(6) the term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade twelve;

(7) the term "elementary school" means a day or residential school which provides elementary education, as determined under State law, and the term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade twelve;

(8) the term "construction" includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities;

(9) the term "equipment" includes machinery, utilities, and building equipment and any necessary enclosure or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials; and

(10) the term "school facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

(b) Any term used in provisions referenced by section 554 and not defined in this section shall have the same meaning as that term was given in title I of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981.

20 USC 2701.

APPLICATION OF OTHER LAWS

20 USC 337a.
20 USC 1222a.
1222d, 1222e.

SEC. 596. (a) Sections 434, 435, and 436 of the General Education Provisions Act (relating to "State Educational Agency Monitoring and Agency Application") shall not apply to programs authorized under this subtitle except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds), and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this subtitle.

20 USC 1223.

(b) Section 412 of the General Education Provisions Act shall apply to any funds appropriated for any fiscal year pursuant to this subtitle.

SECTION 514(b)(2)(B)

OMNIBUS EDUCATION RECONCILIATION ACT OF 1981

(B) Funds appropriated in an appropriation Act for fiscal year 1981 for any program described in section 561(a) (1), (2), (3), (5), and (6) of this Act which are not obligated by a State or local educational agency prior to July 1, 1982, shall remain available to such agency but shall be expended and used in accordance with chapter 2 of the Education Consolidation and Improvement Act of 1981.

TITLE XVII

OMNIBUS BUDGET RECONCILIATION ACT OF 1981

ACCESS TO RECORDS BY COMPTROLLER GENERAL

31 USC 1243
note.

Sec. 1744. For the purpose of evaluating and reviewing the use of block grant funds, consolidated assistance, or other grant programs established or provided for by this Act, the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such funds, assistance, or programs, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of the grantees of such States or political subdivisions.

STATE AUDITING REQUIREMENTS

31 USC 1243
note.

Sec. 1745. (a) Each State shall conduct financial and compliance audits of any block grant funds which the State receives under this Act and any funds which the State receives under any consolidated assistance program established or provided for by this Act.

(b) Any audit required by subsection (a) shall be conducted with respect to the 2-year period beginning on October 1, 1981, and with respect to each 2-year period thereafter.

(c) Any audit required by subsection (a) shall, insofar as is practicable, be conducted in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, activities, and functions.

(d) The audit of funds by a State required by subsection (a) shall be conducted in lieu of any other financial and compliance audit of the same funds which the State is required to conduct under any other provision of this Act, unless such other provision, by explicit reference to this section, otherwise provides.

General Education Provisions Act¹

SHORT TITLE; APPLICABILITY; DEFINITIONS; APPROPRIATIONS

SEC. 400. (a) This title may be cited as the "General Education Provisions Act."

(b) Except where otherwise specified, the provisions of this title shall apply to any program for which an administrative head of an education agency has administrative responsibility as provided by law or by delegation of authority pursuant to law.

(c)(1) For the purposes of this title, the term—

(A) "applicable program"² means any program to which this title is, under the terms of subsection (b), applicable;

(B) "applicable statute" means—

(i) the Act or the title, part or section of an Act, as the case may be, which authorizes the appropriation for an applicable program;

(ii) this title; and

(iii) any other statute which under its terms expressly controls the administration of an applicable program;

(C)³ "Assistant Secretary" means the Assistant Secretary of Health, Education, and Welfare for Education;

(D)⁴ "Commissioner" means the Commissioner of Education;

(E) "Director" means the Director of the National Institute of Education; and

(F)⁵ "Secretary" means the Secretary of Health, Education, and Welfare.

(2) Nothing in this title shall be construed to affect the applicability of the Civil Rights Act of 1964 to any program subject to the provisions of this title.

(3) No Act making appropriations to carry out an applicable program shall be considered an applicable statute.

(d) Except as otherwise limited in this title, there are authorized to be appropriated for any fiscal year such sums as may be necessary to carry out the provisions of this title.

¹Title IV of P.L. 90-247 as amended by P.L. 91-220, P.L. 92-312, P.L. 93-320, P.L. 94-482, P.L. 95-361, and P.L. 96-46.

The organizational changes made by the Department of Education Reorganization Act, P.L. 96-28, are also indicated in this text.

²Section 119 of P.L. 94-274 (Enacted Apr. 21, 1976, 90 Stat. 389) provides as follows:

"In case of any applicable program within the meaning of the General Education Provisions Act, except as otherwise specifically provided by the Act, for the purpose of comparison of activities between fiscal years, amounts applicable to the period July 1, 1973, through September 30, 1976, and the statistical measurements pertaining to those amounts, shall be reduced by 25 per centum where such period is to be by the terms of this Act made or considered to be a part of the fiscal year 1976 or the fiscal year ending September 30, 1977. Notwithstanding any other provision of this Act, where the period July 1, 1976, through September 30, 1976, is to be by the terms of this Act made or considered to be a separate fiscal year, it shall not be considered a fiscal year for the purpose of such comparison of activities between fiscal years and such measurements in the case of any such program."

³The Office of Assistant Secretary of H.E.W. for Education was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1973, P.L. 93-320, sec. 503, 93 Stat. 690.

(Assistant secretary's functions transferred to Secretary of Education by sec. 301 of that Act.)

⁴The Education Division of H.E.W. (including the office of Commissioner of Education) was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1973, P.L. 93-320, sec. 503, 93 Stat. 690. (Commissioner's functions transferred to Secretary of Education by sec. 301 of that Act.)

⁵All previous functions of the Secretary of H.E.W. provided for in the General Education Provisions Act and various other Education-related statutes were transferred to the Secretary of Education by the Department of Education Reorganization Act, approved Oct. 17, 1973, P.L. 93-320, sec. 301, 93 Stat. 677.

(e)(1) The aggregate of the appropriations to the agencies in the Education Division and to the Office of Assistant Secretary for any fiscal year shall not exceed the limitations set forth for that fiscal year in subparagraph (2).

(2)(A) Except as is provided in subparagraph (B), the appropriations to which paragraph (1) applies—

(i) shall not exceed \$7,500,000,000 for the fiscal year ending June 30, 1975, \$8,000,000,000 for the fiscal year ending June 30, 1976, and \$9,000,000,000 for the fiscal year ending June 30, 1977; and

(ii) shall not exceed such amounts as may be authorized by the law and limited by this subparagraph.

(B) The limitations set forth in subparagraph (A) shall not apply—

(i) to uncontrollable expenditures under obligations created under part B of title IV of the Higher Education Act of 1965, parts C and D of title VII of such Act, and the Emergency Insured Student Loan Act of 1969; and

(ii) to any other expenditure under an obligation determined by the Commissioner pursuant to, or in accordance with, law to be an uncontrollable expenditure of the Office of Education.

CONTROL OF PAPERWORK

SEC. 400A. (a)(1)(A) In order to eliminate excessive detail and unnecessary and redundant information requests and to achieve the collection of information in the most efficient and effective possible manner, the Secretary shall coordinate the collection of information and data acquisition activities of all Federal agencies, (i) whenever the respondents are primarily educational agencies or institutions, or (ii) whenever the purpose of such activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

(B) There is hereby established a Federal Education Data Acquisition Council, to consist of members appointed by the Secretary who shall represent the public and the major agencies which collect and use education data, including one representative each of the Office of Management and Budget and of the Office of Federal Statistical Policy and Standards. The members representing the public may be appointed for not more than three years. The Council shall advise and assist the Secretary with respect to the improvement, development, and coordination of Federal education information and data acquisition activities, and shall review the policies, practices, and procedures established by the Secretary. The Council shall meet regularly during the year and shall be headed by an individual from an agency which has expertise in data collection but which undertakes no major data collection of education data.

(2) For the purposes of this section, the term—

(A) "information" has the meaning given it by section 3502 of title 44, United States Code;

(B) "Federal agency" has the meaning given it by section 3502 of the same title; and

(C) "educational agency or institution" means any public or private agency or institution offering education programs.

(3)(A) The Secretary shall review and coordinate all collection of information and data acquisition activities described in paragraph (1)(A) of this subsection, in accordance with procedures approved by the Federal Education Data Acquisition Council. Such procedures shall be designed in order to enable the Secretary to determine whether proposed collection of information and data acquisition activities are excessive in detail, unnecessary, redundant, ineffective, or excessively costly, and, if so, to advise the heads of the relevant Federal agencies.

(B) No collection of information or data acquisition activity subject to such procedures shall be subject to any other review, coordination, or approval procedure outside of the relevant Federal agency, except as required by this subsection and by the Director of the Office of Management and Budget under the rules and regulations established pursuant to chapter 35 of title 44, United States Code. If a requirement for information is submitted pursuant to this Act for review, the timetable for the Director's approval established in section 3507 of the Paperwork Reduction Act of 1990 shall commence on the date the request is submitted, and no independent submission to the Director shall be required under such Act.

(C) The procedures established by the Secretary shall include a review of plans for evaluations and for research when such plans are in their preliminary stages, in order to give advice to the heads of Federal agencies regarding the data acquisition aspects of such plans.

(b)(1) The Secretary shall assist each Federal agency in performing the review and coordination required by this section and shall require of each agency a plan for each collection of information and data acquisition activity, which shall include—

(A) a detailed justification of how information once collected will be used;

(B) the methods of analysis which will be applied to such data;

(C) the timetable for the dissemination of the collected data; and

(D) an estimate of the costs and man-hours required by each educational agency or institution to complete the request and an estimate of costs to Federal agencies to collect, process, and analyze the information, based upon previous experience with similar data or upon a sample of respondents.

(2) In performing the review and coordination required by this section, the Secretary shall assure that—

(A) no information or data will be requested of any educational agency or institution unless that request has been approved and publicly announced by the February 15 immediately preceding the beginning of the new school year, unless there is an urgent need for this information or a very unusual circumstance exists regarding it;

(B) sampling techniques, instead of universal responses, will be used wherever possible, with special consideration being given to the burden being placed upon small school districts, colleges, and other educational agencies and institutions; and

(C) no request for information or data will be approved if such information or data exist in the same or a similar form in the automated indexing system required to be developed pursuant to subsection (d).

(3) Each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a thirty-day period, to comment to the Secretary on the collection of information and data acquisition activity. The exact data instruments for each proposed activity shall be available to the public upon request during this comment period.

(4) No changes may be made in the plans for the acquisition of that information or data, except changes required as a result of the review described in this section, after such plans have been finally approved under this section, unless the changed plans go through the same approval process.

(5) The Secretary may waive the requirements of this section for individual research and evaluation studies which are not designated for individual project monitoring or review, provided that—

(A) the study shall be of a nonrecurring nature;

(B) any educational agency or institution may choose whether or not to participate, and that any such decision shall not be used by any Federal agency for purposes of individual project monitoring or funding decisions;

(C) the man-hours necessary for educational agencies and institutions to respond to requests for information or data shall not be excessive, and the requests shall not be excessive in detail, unnecessary, redundant, ineffective, or excessively costly; and

(D) the Federal agency requesting information or data has announced the plans for the study in the Federal Register.

The Secretary shall inform the relevant agency or institution concerning the waiver decision within thirty days following such an announcement, or the study shall be deemed waived and may proceed. Any study waived under the provisions of this subsection shall be subject to no other review than that of the agency requesting information or data from educational agencies or institutions.

(6) Nothing in this section shall be construed to interfere with the enforcement of the provisions of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law.

(c) The Secretary shall, insofar as practicable, and in accordance with the provisions of this Act, provide educational agencies and institutions and other Federal agencies, pursuant to the requirement of section 406(f)(2)(A), with summaries of information collected and the data acquired by Federal agencies, unless such data were acquired on a confidential basis.

(d) The Secretary shall, insofar as practicable—

(1) develop standard definitions and terms consistent, wherever possible, with those established by the Office of Federal Statistical Policy and Standards, Department of Commerce, to

be used by all Federal agencies in dealing with education-related information and data acquisition requests;

(2) develop an automated indexing system for cataloging all available data;

(3) establish uniform reporting dates among Federal agencies for the information and data acquisition required after review under this section;

(4) publish annually a listing of education data requests, by Federal agency, and for the programs administered in the Education Division, publish a listing annually of each such program with its appropriation and with the data burden resulting from each such program; and

(5) require the Federal agency proposing the collection of information or data acquisition activity to identify in its data instrument the legislative authority specifically requiring such collection, if any, and require the responding educational agency or institution to make the same identification if it in turn collects such information or data from other agencies or individuals.

(e)(1) Subject to the provisions of paragraph (2), the Secretary shall develop, in consultation with Federal and State agencies and local educational agencies, procedures whereby educational agencies and institutions are permitted to submit information required under any Federal educational program to a single Federal or State educational agency.

(2) Any procedures developed under paragraph (1) shall be considered regulations for the purpose of section 431 and shall be submitted subject to disapproval in accordance with section 431(e) of this Act for a period of not to exceed 60 days computed in accordance with such section.

(3) The Secretary shall submit a report to the Congress not less than once every three years, describing the implementation of this section. Such report shall contain recommendations for revisions to Federal laws which the Secretary finds are imposing undue burdens on educational agencies and institutions, and such recommendations shall not be subject to any review by any Federal agency outside the Department.

(f)(1) The Secretary is authorized to make grants from sums appropriated pursuant to this subsection to State educational agencies, including State agencies responsible for postsecondary education, for the development or improvement of education management information systems.

(2) Any State educational agency is eligible for a grant of funds under this subsection subject to the following conditions:

(A) The agency agrees to use such funds for the development or improvement of its management information system and agrees to coordinate all data collection for Federal programs administered by the agency through such a system.

(B) The agency agrees to provide funds to local educational agencies and institutions of higher education for the development or improvement of management information systems when such grants are deemed necessary by the State educational agency.

(C) The State agency agrees to take specific steps, in cooperation with the Secretary and with local educational agencies or

institutions of higher education in the State, as appropriate, to eliminate excessive detail and unnecessary and redundant information requests within the State and to achieve the collection of information in the most efficient and effective possible manner so as to avoid imposing undue burdens on local educational agencies or institutions of higher education.

(g) For the purpose of carrying out this subsection—

(1) there are authorized to be appropriated for salaries and expenses \$600,000 for fiscal year 1979, \$1,000,000 for fiscal year 1980, and \$1,200,000 for each of the two succeeding fiscal years;

(2) there are authorized to be appropriated for grants under subsections (f) (1) and (2) the sums of \$5,000,000 for fiscal year 1979, \$25,000,000 for fiscal year 1980, and \$50,000,000 for each of the two succeeding fiscal years; and

(3) the sums appropriated according to paragraphs (1) and (2) shall be appropriated as separate line items.

PART A—EDUCATION DIVISION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE¹

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RESPONSIBILITY OF STATES TO FURNISH INFORMATION

SEC. 406A. (a) The Commissioner shall require that each State submit to him, within ninety days after the end of any fiscal year, a report on the uses of Federal funds in that State under any applicable program for which the State is responsible for administration. Such report shall—

(1) list all grants and contracts made under such program to the local educational agencies and other public and private agencies and institutions within such State during such year;

(2) include the total amount of funds available to the State under each such program for such fiscal year and specify from which appropriation Act or Acts these funds were available;

(3) with respect to the second preceding fiscal year, include a compilation of reports from local educational agencies and other public and private agencies and institutions within such State which sets forth the amount of such Federal funds received by each such agency and the purposes for which such funds were expended;

¹The Education Division of the Department of Health, Education, and Welfare was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690. The previous functions of the Education Division were transferred to the Secretary of Education by sec. 301 of that Act (93 Stat. 677).

(4) with respect to such second preceding fiscal year, include a statistical report on the individuals served or affected by programs, projects, or activities assisted with such Federal funds; and

(5) be made readily available by the State to local educational agencies and other public and private agencies and institutions within the State, and to the public.

(b) On or before March 31 of each year, the Commissioner shall submit to the Committee on Labor and Human Resources of the Senate and to the Committee on Education and Labor of the House of Representatives an analysis of these reports and a compilation of statistical data derived therefrom.

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GENERAL AUTHORITY OF ADMINISTRATIVE HEADS OF EDUCATION AGENCIES

SEC. 408. (a) Each administrative head of an education agency, in order to carry out functions otherwise vested in him by law or by delegation of authority pursuant to law, is, subject to limitations as may be otherwise imposed by law, authorized—

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(2) in accordance with those provisions of title 5, United States Code, relating to the appointment and compensation of personnel and subject to such limitations as are imposed in this part, to appoint and compensate such personnel as may be necessary to enable such agency to carry out its functions;

(3) to accept unconditional gifts or donations of services, money, or property (real, personal, or mixed; tangible or intangible);

(4) without regard for section 3643 of the Revised Statutes of the United States (31 U.S.C. 529), to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary for the conduct of such agency;

(5) with funds expressly appropriated for such purpose, to construct such facilities as may be necessary to carry out functions vested in him or in the agency of which he is head, and to acquire and dispose of property; and

(6) to use the services of other Federal agencies and reimburse such agencies for such services.

(b) The administrative head of an education agency shall ensure that, in contracting under the authority of this section for the services of independent persons in the competitive review of grant applications, all such persons are qualified, by education and experience, to perform such services. The qualifications of such persons and the terms of such contracts, other than information which identify such person, shall be readily made available to the public.

(c) Any administrative head of an education agency is, subject to any other limitations on delegations of authority provided by law, authorized to delegate any of his functions under this section to an officer or employee of that agency.

(d) For the purposes of this title, the term "administrative head of an education agency" means the Commissioner and the Director of the National Institute of Education. To the extent that the Assistant Secretary is directly responsible for the administration of a program and to the extent that the Assistant Secretary is responsible for the supervision of the National Center for Education Statistics, the Assistant Secretary shall, for such purposes, be considered within the meaning of such term.

EDUCATION IMPACT STATEMENT

SEC. 409. Notwithstanding any other provision of law, no regulation affecting any institution of higher education in the United States, promulgated on or after the date of enactment of this Act, shall become effective unless such agency causes to be published in the Federal Register a copy of such proposed regulation together with an educational impact assessment statement which shall determine whether any information required to be transmitted under such regulation is already being gathered by or is available from any other agency or authority of the United States. Notwithstanding the exception provided under section 553(b) of title 5, United States Code, such statement shall be based upon the record established under the provisions of section 553 of title 5, United States Code, compiled during the rulemaking proceeding regarding such regulation.

PART B—APPROPRIATIONS AND EVALUATIONS

Subpart I—Appropriations

ADVANCE FUNDING

SEC. 411. To the end of affording the responsible State, local, and Federal officers concerned adequate notice of available Federal financial assistance for education, appropriations for grants, contracts, or other payments under any applicable program are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding that its initial application under such program will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

AVAILABILITY OF APPROPRIATIONS ON ACADEMIC OR SCHOOL YEAR BASIS

SEC. 412. (a) Appropriations for any fiscal year for grants, loans, contracts, or other payments to educational agencies or institutions under any applicable program may, in accordance with regulations of the Secretary, be made available for expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year.

(b) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds from appropriations to carry out any programs to which this title is applicable during any fiscal year which are not obligated and ex-

pended by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such succeeding fiscal year.

(2)¹ Any funds under any applicable program which, pursuant to paragraph (1), are available for obligation and expenditure in the year succeeding the fiscal year for which they were appropriated shall be obligated and expended in accordance with--

(A) the Federal statutory and regulatory provisions relating to such program which are in effect for such succeeding fiscal year, and

(B) any program plan or application submitted by such educational agencies or institutions for such program for such succeeding fiscal year.

(c) If any funds appropriated to carry out any applicable program are not obligated pursuant to a spending plan submitted in accordance with section 3679(dx2) of the Revised Statutes and become available for obligation after the institution of a judicial proceeding seeking the release of such funds, then such funds shall be available for obligation and expenditure until the end of the fiscal year which begins after the termination of such judicial proceeding.

AVAILABILITY OF APPROPRIATIONS

SEC. 413. Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this title, funds appropriated for any fiscal year to carry out any of the programs to which this title is applicable shall remain available for obligation and expenditure until the end of such fiscal year.

CONTINGENT EXTENSION OF PROGRAMS

SEC. 414.² (a) Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year--

(1) of the authorization of appropriations for an applicable program; or

(2) of the duration of an applicable program;

¹Section 1530(b) of the Education Amendments of 1978 (P.L. 95-561), as amended by sec. 2(b) of P.L. 96-46, reads as follows:

The provisions of section 412(b) of the General Education Provisions Act, as added by section 1245 of this Act, shall not take effect with respect to the use of funds under section 421 of the Elementary and Secondary Education Act of 1965 until October 1, 1980, except at the option of local educational agencies.

²Section 327 of Part B of Title III of P.L. 94-482 provides as follows:

The provisions of section 414 of the General Education Provisions Act, relating to the contingent extension of applicable programs, shall not apply to the Indo-China Refugee Children Assistance Act of 1975, or to any program of financial assistance for educational purposes for Indo-China refugee children.

either—

(A) has passed or has formally rejected legislation which would have the effect of extending the authorization or duration (as the case may be) of that program; or

(B) by action of either the House of Representatives or the Senate, approves a resolution stating that the provisions of this section shall no longer apply to such program;
such authorization or duration is hereby automatically extended for—

(i) two additional fiscal years for any applicable program authorized to be included in the Appropriation Act for the fiscal year preceding the fiscal year for which appropriations are available for obligation, or

(ii) one additional fiscal year for any other applicable program

The amount appropriated for each additional year shall not exceed the amount which the Congress could, under the terms of the law for which the appropriation is made, have appropriated for such program during such terminal year.

(b)(1) For the purposes of clause (A) of subsection (a), the Congress shall not have been deemed to have passed legislation unless such legislation becomes law.

(2) In any case where the Commissioner is required under an applicable statute to carry out certain acts or make certain determinations which are necessary for the continuation of an applicable program, if such acts or determinations are required during the terminal year of such program, such acts and determinations shall be required during any fiscal year in which that part of subsection (a) which follows clause (B) thereof is in operation.

PAYMENTS

SEC. 415. Payments pursuant to grants or contracts under any applicable program may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Commissioner may determine.

Subpart 2—Planning and Evaluation of Federal Education Activities

PROGRAM PLANNING AND EVALUATION

SEC. 416. Sums appropriated pursuant to section 400(d) may include for any fiscal year for which appropriations are otherwise authorized under any applicable program not to exceed \$25,000,000 which shall be available to the Secretary, in accordance with regulations prescribed by him, for expenses, including grants, contracts, or other payments, for (1) planning for the succeeding year for any such program, and (2) evaluation of such programs.

ANNUAL EVALUATION REPORTS

SEC. 417. (a) Not later than November 1 of each year, the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual evaluation report which evaluates the effectiveness of applicable programs (including compliance with provisions of law requiring the maintenance of non-Federal expenditures for the purposes of such applicable programs) in achieving their legislated purposes together with recommendations relating to such programs for the improvement of such programs which will result in greater effectiveness in achieving such purposes. In the case of any evaluation report evaluating specific programs and projects, such report shall—

(A) set forth goals and specific objectives in qualitative and quantitative terms for all programs and projects assisted under the applicable program concerned and relate those goals and objectives to the purposes of such program;

(B) contain information on the progress being made during the previous fiscal year toward the achievement of such goals and objectives;

(C) describe the cost and benefits of the applicable program being evaluated during the previous fiscal year and identify which sectors of the public receive the benefits of such program and bear the costs of such program;

(D) contain plans for implementing corrective action and recommendations for new or amended legislation where warranted;

(E) contain a listing identifying the principal analyses and studies supporting the major conclusions and recommendations in the report; and

(F) be prepared in concise summary form with necessary detailed data and appendices, including tabulations of available data to indicate the effectiveness of the programs and projects by the sex, race, and age of its beneficiaries.

(2) ¹ Repealed.

(b) Each evaluation report submitted pursuant to subsection (a) shall contain: (1) a brief description of each contract or grant for evaluation of any program (whether or not such contract or grant was made under section 416) any part of the performance of which occurred during the preceding year, (2) the name of the firm or individual who is to carry out the evaluation, and (3) the amount to be paid under the contract or grant.

ANNUAL EVALUATION REPORTS

SEC. 418. (a) In the case of any applicable program for which—

(1) the authorization of appropriations expires; or

(2) the time during which payments or grants are to be made expires;

¹ Paragraph (2) of section 417(a) was repealed Aug. 6, 1979, P.L. 96-46, sec. 4(b), 93 Stat. 342 (effective Oct. 1, 1979).

not later than one year prior to the date of such expiration, the Assistant Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a comprehensive evaluation report on such program.

(b) Any comprehensive evaluation report submitted pursuant to subsection (a) shall contain—

(1) a history of the program concerned, including—

(A) a history of authorizations of appropriations, budget requests, appropriations, and expenditures (including, where applicable, State and local expenditures) for such programs;

(B) a history of legislative recommendations with respect to such program made by the President and the disposition of such recommendations, and

(C) a history of legislative changes made in applicable statutes with respect to such program;

(2) assuming a continuation of such program, recommendations for improvements (including legislative changes and funding levels) in such program with a view toward achieving the legislative purposes of such program;

(3) a compilation and summary of all evaluations of such program; and

(4) a recommendation with respect to whether such program should be continued, and the date of its expiration, and the reasons for such recommendations.

EVALUATION BY THE COMPTROLLER GENERAL

SEC. 419. (a) The Comptroller General of the United States shall review, audit, and evaluate any Federal education program upon request by a committee of the Congress having jurisdiction of the statute authorizing such program or, to the extent personnel are available, upon request by a member of such committee. Upon such request, he shall (1) conduct studies of statutes and regulations governing such program; (2) review the policies and practices of Federal agencies administering such program; (3) review the evaluation procedures adopted by such agencies carrying out such program; and (4) evaluate particular projects or programs. The Comptroller General shall compile such data as are necessary to carry out the preceding functions and shall report to the Congress at such times as he deems appropriate his findings with respect to such program and his recommendations for such modifications in existing laws, regulations, procedures and practices as will in his judgment best serve to carry out effectively and without duplication the policies set forth in education legislation relative to such program.

(b) In carrying out his responsibilities as provided in subsection (a), the Comptroller General shall give particular attention to the practice of Federal agencies of contracting with private firms, organizations, and individuals for the provision of a wide range of studies and services (such as personnel recruitment and training, program evaluation, and program administration) with respect to Federal education programs, and shall report to the heads of the agencies concerned and to the Congress his findings with respect to the necessity for such contracts and their effectiveness in serving the objectives established in education legislation.

(c) In addition to the sums authorized to be appropriated under section 400(d), there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

PROHIBITION AGAINST USE OF APPROPRIATED FUNDS FOR BUKING

Sec. 420. No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except for funds appropriated pursuant to title I of the Act of September 30, 1950 (Public Law 874, 81st Congress), but not including any portion of such funds as are attributable to children counted under subparagraph (C) of section 3(d)(2) or section 403(1)(C) of that Act.

PART C—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING
THE OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS;
GENERAL AUTHORITY OF THE COMMISSIONER OF EDUCATION

* * * * *

SUBPART 1—GENERAL AUTHORITY

ADMINISTRATION OF EDUCATION PROGRAMS

Sec. 421A (a) The Commissioner is authorized to delegate any of his functions under any applicable program, except the making of regulations and the approval of State plans, to any officer or employee of the Office of Education.

(b) In administering any applicable program, the Commissioner is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement, as may be agreed upon.

(c)¹ (1XA) Except in the case of a law which—

(i) authorizes appropriations for carrying out, or controls the administration of, an applicable program, or

(ii) is enacted in express limitation of the provisions of this paragraph,

no provision of any law shall be construed to authorize the consolidation of any applicable program with any other program. Where the provisions of law governing the administration of an applicable program permit the packaging or consolidation of applications for grants or contracts to attain simplicity or effectiveness of administration, nothing in this subparagraph shall be deemed to interfere with such packaging or consolidation.

¹Section 302(c) of P.L. 92-318 provides as follows:

"(c) The provisions of section 421(c) of the General Education Provisions Act shall be effective upon the date of enactment of this Act. No provision of any law which is inconsistent with such section 421(c) shall be effective nor shall any such provision control to the extent of such inconsistency, unless such a law is enacted after the date of enactment of this Act."

(B) No provision of any law which authorizes an appropriation for carrying out, or controls the administration of, an applicable program shall be construed to authorize the consolidation of any such program with any other program unless provision for such a consolidation is expressly made thereby.

(C) For the purposes of this subsection, the term "consolidation" means any agreement, arrangement, or the other procedure which results in—

(i) the commingling of funds derived from one appropriation with those derived from another appropriation,

(ii) the transfer of funds derived from an appropriation to the use of an activity not authorized by the law authorizing such appropriation,

(iii) the use of practices or procedures which have the effect of requiring, or providing for, the approval of an application for funds derived from different appropriations according to any criteria other than those for which provision is made (either expressly or implicitly) in the law which authorizes the appropriation of such funds, or this title, or

(iv) as a matter of policy the making of a grant or contract involving the use of funds derived from one appropriation dependent upon the receipt of a grant or contract involving the use of funds derived from another appropriation.

(2)(A) No requirement or condition imposed by a law authorizing appropriations for carrying out any applicable program, or controlling the administration thereof, shall be waived or modified, unless such a waiver or modification is expressly authorized by such law or by a provision of this title or by a law expressly limiting the applicability of this paragraph.

(B) There shall be no limitation on the use of funds appropriated to carry out any applicable program other than limitations imposed by the law authorizing the appropriation or a law controlling the administration of such program; nor shall any funds appropriated to carry out an applicable program be allotted, apportioned, allocated, or otherwise distributed in any manner or by any method different from that specified in the law authorizing the appropriation.

(3) No person holding office in the executive branch of the Government shall exercise any authority which would authorize or effect any activity prohibited by paragraph (1) or (2).

(4) The transfer of any responsibility, authority, power, duty, or obligation subject to this title, from the Commissioner to any other officer in the executive branch of the Government, shall not affect the applicability of this title with respect to any applicable program.

COLLECTION AND DISSEMINATION OF INFORMATION¹

Sec. 422. (a) The Commissioner shall—

(1) prepare and disseminate to State and local educational agencies and institutions information concerning applicable programs and cooperate with other Federal officials who administer programs affecting education in disseminating information concerning such programs;

(2) inform the public on federally supported education programs;

(3) collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their purposes; and

(4) prepare and publish an annual report (to be referred to as "the Commissioner's annual report") on (A) the condition of education in the Nation, (B) developments in the administration, utilization, and impact of applicable programs, (C) results of investigations and activities by the Office of Education, and (D) such facts and recommendations as will serve the purpose for which the Office of Education is established (as set forth in section 403 of this Act).

(b) The Commissioner's annual report shall be submitted to the Congress not later than June 30 of each calendar year. The Commissioner's annual report shall be made available to State and local educational agencies and other appropriate agencies and institutions and to the general public.

(c) The Commissioner is authorized to enter into contracts with public or private agencies, organizations, groups, or individuals to carry out the provisions of this section.

CATALOG OF FEDERAL EDUCATION ASSISTANCE PROGRAMS

Sec. 423. The Commissioner shall prepare and make available in such form as he deems appropriate a catalog of all Federal education assistance programs whether or not such programs are administered by him. The catalog shall—

(1) identify each such program, and include the name of the program, the authorizing statute, the specific Federal administering officials, and a brief description of such program;

(2) set forth the availability of benefits and eligibility restrictions in each such program;

(3) set forth the budget requests for each such program, past appropriations, obligations incurred, and pertinent financial information indicating (A) the size of each such program for selected fiscal years, and (B) any funds remaining available;

(4) set forth the prerequisites, including the cost to the re-

¹Section 1525 of the Education Amendments of 1978 (P.L. 95-561), as amended by section 2(a)(9) of P.L. 96-46, mandates a study of evaluation practices and procedures. It reads as follows: at 92 Stat. 2779:

Study of Evaluation Practices and Procedures

Sec. 1525. The Commissioner of Education shall conduct a study of evaluation practices and procedures at the national, State, and local levels with respect to federally funded elementary and secondary educational programs and shall include in the first annual report to Congress submitted more than eighteen months after the date of enactment of this Act proposals and recommendations for the revision or modification of any part or all of such practices and procedures. Such proposals and recommendations shall include provisions—

(1) to ensure that evaluations are based on uniform methods and measurements;
(2) to ensure the integrity and independence of the evaluation process; and
(3) to ensure appropriate follow-up on the evaluations that are conducted."

recipient of receiving assistance under each such program, and any duties required of the recipient after receiving benefits;

(5) identify appropriate officials in Washington, District of Columbia, as well as in each State and locality (if applicable), to whom application or reference for information for each such program may be made;

(6) set forth the application procedures;

(7) contain a detailed index designed to assist the potential beneficiary in identifying all education assistance programs related to a particular need or category of potential beneficiaries;

(8) contain such other program information and data as the Commissioner deems necessary or desirable in order to assist the potential program beneficiary to understand and take advantage of each Federal education assistance program; and

(9) be transmitted to Congress with the Commissioner's annual report.

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TECHNICAL ASSISTANCE

SEC. 426.

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(b) The Commissioner shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines (1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended, (2) that the agency will use such procedures as will insure adequate evaluation of each of the programs involved, and (3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

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(d) The Commissioner's annual report shall contain a statement of the Commissioner's activities under this section.

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USE OF FUNDS WITHHELD FOR FAILURE TO COMPLY WITH OTHER
PROVISIONS OF FEDERAL LAW

Sec. 428. At any time that the Commissioner establishes an entitlement, or makes an allotment, or reallocation to any State, under any applicable program, he shall reduce such entitlement, allotment, or reallocation by such amount as he determines it would have been reduced, had the data on which the entitlement, allotment, or reallocation is based excluded all data relating to local educational agencies of the State which on the date of the Commissioner's action are ineligible to receive the Federal financial assistance involved because of a failure to comply with title VI of the Civil Rights Act of 1964. Any appropriated funds which will not be paid to a State as a result of the preceding sentence may be used by the Commissioner for grants to local educational agencies of that State in accordance with section 405 of the Civil Rights Act of 1964.

AUTHORIZATION TO FURNISH INFORMATION

Sec. 429. The Commissioner is authorized to transfer transcripts or copies of other records of the Office of Education to State and local officials, public and private organizations, and individuals.

SUBPART 2—ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

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REGULATIONS: REQUIREMENTS AND ENFORCEMENT

Sec. 431. (a)(1) For the purpose of this section, the term "regulation" means any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by the Commissioner.

(2) Regulations issued by the Department of Health, Education, and Welfare or the Office of Education, or by any official of such agencies, in connection with, or affecting, the administration of any applicable program shall contain immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based.

(b)(1) No proposed regulation prescribed for the administration of any applicable program may take effect until thirty days after it is published in the Federal Register.

(2)(A) During the thirty-day period prior to the date upon which such regulation is to be effective, the Commissioner shall, in accordance with the provisions of section 553, of title 5, United States Code, offer any interested party an opportunity to make comment upon, and take exception to, such standard, rule, regulation, or general requirement and shall reconsider any such standard, rule, regulation, or general requirement upon which comment is made or to which exception is taken.

(B) If the Commissioner determines that the thirty-day requirement in paragraph (1) will cause undue delay in the implementation of a regulation, thereby causing extreme hardship for the intended beneficiaries of an applicable program, he shall notify the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate. If neither committee disagrees with the determination of the Commissioner within 10 days after such notice, the Commissioner may waive such requirement with respect to such regulation.

(c) All such regulations shall be uniformly applied and enforced throughout the fifty States.

(d)(1) Concurrently with the publication in the Federal Register of any final regulation of general applicability as required in subsection (b) of this section, such final regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Such final regulation shall become effective not less than forty-five days after such transmission unless the Congress shall, by concurrent resolution, find that the final regulation is inconsistent with the Act from which it derives its authority, and disapprove such final regulation in whole or in part. Failure of the Congress to adopt such a concurrent resolution with respect to any such final regulation prescribed under any such Act, shall not represent, with respect to such final regulation, an approval or finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.¹

(2) The forty-five day period specified in paragraph (1) shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to the call of the Chair, or in adjournment to a day certain for a period of more than four consecutive days. In any such period of adjournment, the forty-five days shall continue to run, but if such period of adjournment is thirty calendar days, or less, the forty-five day period shall not be deemed to have elapsed earlier than ten days after the end of such adjournment. In any period of adjournment which lasts more than thirty days, the forty-five day period shall be deemed to have elapsed after thirty calendar days has elapsed, unless, during those thirty calendar days, either the Committee on Education and Labor of the House of Representatives, or the Committee on Labor and Human Resources of the Senate, or both, shall have directed its chairman, in accordance with said committee's rules, and the rules of that House, to transmit to the appropriate department or agency head a formal statement of objection to the final regulation. Such letter shall suspend the effective date of the final regulation until not less than twenty days after the end of such adjournment, during which the Congress may enact the concurrent resolution provided for in this subsection. In no event shall the final regulation go into effect until the forty-five day period shall have elapsed, as provided for in this subsection, for both Houses of the Congress.²

¹ This sentence was added to Section 431(dx1) by P.L. 94-142, Sec. 7(h), 89 Stat. 796, approved Nov. 29, 1975. Section 8(b) of P.L. 94-142 provides that amendments to Section 431(d), made by P.L. 94-142, are effective as of Nov. 29, 1975.

² Section 8(b) of P.L. 94-43 (The Emergency Technical Provisions Act) provides that "Subsections (b) and (d) of Section 431 of the General Education Provisions Act shall not operate to delay the effectiveness of regulations issued by the Commissioner of Education to implement the provisions of this Act."

(e) Whenever a concurrent resolution of disapproval is enacted by the Congress under the provisions of this section, the agency which issued such regulation may thereafter issue a modified regulation to govern the same or substantially identical circumstances, but shall, in publishing such modification in the Federal Register and submitting it to the Speaker of the House of Representatives and the President of the Senate, indicate how the modification differs from the final regulation earlier disapproved, and how the agency believes the modification disposes of the findings by the Congress in the concurrent resolution of disapproval.

(f) For the purposes of subsections (d) and (e) of this section, activities under sections 404, 405, and 406 of this title, and under title IX of the Education Amendments of 1972 shall be deemed to be applicable programs.

(g) Not later than sixty days after the enactment of any part of any Act affecting the administration of any applicable program, the Commissioner shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a schedule in accordance with which the Commissioner has planned to promulgate final regulations implementing such Act or part of such Act. Such schedule shall provide that all such final regulations shall be promulgated within one hundred and eighty days after the submission of such schedule. Except as is provided in the following sentence, all such final regulations shall be promulgated in accordance with such schedule. If the Commissioner finds that, due to circumstances unforeseen at the time of the submission of any such schedule, he cannot comply with a schedule submitted pursuant to this subsection, he shall notify such committees of such findings and submit a new schedule. If both such committees notify the Commissioner of their approval of such new schedule, such final regulations shall be promulgated in accordance with such new schedule.

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PROHIBITION AGAINST FEDERAL CONTROL OF EDUCATION

Sec. 432. No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

LABOR STANDARDS

SEC. 433. Except for emergency relief under section 7 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), all laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

Subpart 3—Administration of Education Programs and Projects by States and Local Educational Agencies

STATE EDUCATIONAL AGENCY MONITORING AND ENFORCEMENT

SEC. 434. (a) In the case of any applicable program in which Federal funds are made available to local agencies in a State through or under the supervision of a State board or agency, the Commissioner may require the State to submit a plan for monitoring compliance by local agencies with Federal requirements under such program and for enforcement by the State of such requirements. The Commissioner may require such plan to provide—

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(2) for periodic audits of expenditures under such programs by auditors of the State or other auditors not under the control, direction, or supervision of the local educational agency;

* * * * *

SINGLE STATE APPLICATION

Sec. 435.

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(b) An application submitted under subsection (a) shall set forth assurances, satisfactory to the Commissioner—

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(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to such entities, and that the public agency or nonprofit private agency, institution, or organization will administer such funds and property;

* * * * *

(5) that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

* * * * *

SINGLE LOCAL EDUCATIONAL AGENCY APPLICATION

Sec. 436.

* * * * *

(b) The general application submitted by a local educational agency under subsection (a) shall set forth assurances—

* * * * *

(2) that the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

(3) that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

* * * * *

Subpart 4—Records; Privacy; Limitation on Withholding Federal Funds

RECORDS

SEC. 437. (a) Each recipient of Federal funds under any applicable program through any grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency) shall keep records which fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective audit. The recipient shall maintain such records for five years after the completion of the activity for which the funds are used.

* * * * *

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS¹

SEC. 438. (a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the educational records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution.

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

¹This section may be cited as the "Family Educational Rights and Privacy Act of 1974".

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purposes for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's educational records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials, which—

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include—

- (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c)), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection.

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1) (A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

PROTECTION OF PUPIL RIGHTS

SEC. 439 (a). All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

(b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning:

- (1) political affiliations;
- (2) mental and psychological problems potentially embarrassing to the student or his family;
- (3) sex behavior and attitudes;
- (4) illegal, anti-social, self-incriminating and demeaning behavior;
- (5) critical appraisals of other individuals with whom respondents have close family relationships;
- (6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or
- (7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

LIMITATION ON WITHHOLDING OF FEDERAL FUNDS

SEC. 440. (a) Except as provided in section 435(b)(1)(D) of this Act, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a pre-school program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

(b) The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with title VI of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include—

(1) at least 30 days prior written notice of deferral to the agency, setting forth the particular program or programs which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secretary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

(c) It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any other numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.

* * * * *

PART E—ENFORCEMENT¹

EDUCATION APPEAL BOARD

SEC. 451. (a) The Commissioner shall establish in the Office of Education an Education Appeal Board (hereinafter in this part referred to as the "Board") the functions of which shall be to conduct—

- (1) audit appeal hearings pursuant to section 452 of this Act,
- (2) withholding hearings pursuant to section 453 of this Act,
- (3) cease and desist hearings pursuant to section 454 of this Act, and
- (4) other proceedings designated by the Commissioner.

(b) The members of the Board shall be designated by the Secretary, in consultation with the Assistant Secretary for Education and the Commissioner, and may include individuals who are officers or employees of the United States, as well as individuals who are not full-time employees of the Federal Government.

(c) The Board shall be composed of not less than fifteen nor more than thirty members, of whom no more than one-third shall be officers or employees of the Department. The Secretary shall designate one of the members of the Board to be the Chairman.

(d) For the purposes of conducting hearings as provided in subsection (a) the Chairman may appoint hearing panels of not less than three members of the Board, or the Chairman may designate the entire Board to sit as a panel for any case or class of cases. On any such panel—

- (1) the majority of members shall not be individuals in the full-time employment of the Federal Government,
- (2) the membership shall not include any individual who is a party to, or has any responsibility for, any particular matter assigned to that panel, and
- (3) the Chairman of the Board shall designate one member of each such panel to be the presiding officer.

(e) The proceedings of the Board shall be conducted according to such rules as the Commissioner shall prescribe by regulation in conformance with the rules relating to hearings in title 5, United States Code, sections 554, 556, and 557 respecting—

- (1) the receipt of oral or written testimony,
- (2) notice of the issues to be considered,
- (3) the right to counsel,
- (4) intervention of third parties,
- (5) transcripts of proceedings, and
- (6) such other matters as may be necessary to carry out the functions of the Board.

(f) If there has been established within the Department of Health, Education, and Welfare an appeal board which the Commissioner determines is capable of carrying out the functions of the Board established under this section, he may, with the approval of the Secretary, designate such Department appeal board to carry out the functions of this section.

¹Part E was added by section 1232 of the Education Amendments of 1978 (P.L. 95-561). Regarding the effective date of Part E, section 1261 of P.L. 95-561 reads as follows, at 92 Stat. 2356: "The amendments made by section 1232 shall take effect 120 days after the enactment of this Act."

AUDIT DETERMINATIONS

SEC. 452. (a) Whenever the Commissioner determines that an expenditure not allowable under a program listed in section 435(a) of this title, or conducted under title VI and title VII of the Elementary and Secondary Education Act of 1965, or under the Emergency School Aid Act, has been made by a State or by a local educational agency, or that a State or local educational agency has otherwise failed to discharge its obligation to account for funds under any such program, the Commissioner shall give such State or local educational agency written notice of a final audit determination, and he shall at the same time notify such State or agency of its right to have such determination reviewed by the Board.

(b) A State or a local educational agency that has received written notice of a final audit determination and that desires to have such determination reviewed by the Board shall submit to the Board an application for review not later than thirty days after receipt of notification of the final audit determination. The application for review shall be in the form and contain the information specified by the Board. The Board shall return to the Commissioner for such action as he deems appropriate any final audit determination which, in the judgment of the Board, contains insufficient detail to identify with particularity those expenditures which are not allowable. Unless the Board determines that a final audit determination lacks sufficient detail, the burden shall be upon the State or local educational agency to demonstrate the allowability of expenditures disallowed in the final audit determination.

(c) When a State or a local educational agency has submitted an application for review with respect to a final audit determination, no action shall be taken by the Commissioner to collect the amount determined to be owing until the Board has issued a final decision upholding the audit determination as to all or any part of such amount. The filing of such an application shall not affect the authority of the Commissioner to take any other adverse action against such State or agency under this part.

(d) A decision of the Board with respect to an application for review under this section shall become final unless within sixty days following receipt by the State or by the local educational agency of written notice of the decision—

(1) the Commissioner for good cause shown, modifies or sets aside the decision, in whole or in part, in which case the decision shall become final sixty days after such action by the Commissioner, or

(2) the State or the local educational agency files a petition for judicial review as provided in section 455 of this Act.

(e) A final audit determination by the Commissioner under subsection (a) with respect to which review has not been requested pursuant to subsection (b), or a final decision of the Board under this section upholding a final audit determination against a State or a local educational agency shall establish the amount of the audit determination as a claim of the United States which the State or the local educational agency shall be required to pay to the United States and which may be collected by the Commissioner in accordance with the Federal Claims Collection Act of 1966.

(f)(1) Notwithstanding any other provision of law, the Commissioner may, subject to the notice requirements of paragraph (2), compromise any claim established under this section for which the initial determination was found to be not in excess of \$50,000, where the Commissioner determines that (A) the collection of any or all of the amount thereof would not be practical or in the public

interest, and (B) the practice which resulted in the claim has been corrected and will not recur.

(2) Not less than forty-five days prior to the exercise of the authority to compromise a claim pursuant to paragraph (1), the Commissioner shall publish in the Federal Register a notice of his intention to do so. Such notice shall provide interested persons an opportunity to comment on any proposed action under this subsection through the submission of written data, views, or arguments.

(g) No State and no local educational agency shall be liable to refund any amount expended under an applicable program which is determined to be unauthorized by law if that expenditure was made more than five years before that State or local educational agency is given the notice required by subsection (a).

(h) The Secretary shall employ, assign, or transfer sufficient professional personnel to ensure that all matters brought before the Board may be dealt with in a timely manner.

* * * * *

CEASE AND DESIST ORDERS

SEC. 454. (a) Whenever the Commissioner has reason to believe that any State or any local educational agency that receives funds under any applicable program has failed to comply substantially with any requirement of law applicable to such funds in lieu of proceeding under section 453 of this Act, the Commissioner may issue and cause to be served upon such State or upon such local educational agency a complaint (1) stating the charges upon which his belief is based, and (2) containing a notice of a hearing to be held before the Board on a date at least thirty days after the service of that complaint.

(b) The State or the local educational agency upon which such a complaint has been served shall have the right to appear before the Board on the date specified and to show cause why an order should not be entered by the Board requiring such State or such local educational agency to cease and desist from the violation of law charged in the complaint.

(c) The testimony in any hearing held under this section shall be reduced to writing and filed with the Board. If upon that hearing the Board shall be of the opinion that the State or the local educational agency is in violation of any requirement of law as charged in the complaint, it shall make a report in writing stating its findings of fact and shall issue and cause to be served upon the State or the local educational agency an order requiring the State or the local educational agency to cease and desist from the practice, policy, or procedure which resulted in such violation.

(d) The report and order of the Board shall become final on the sixtieth day following the date upon which the order of the Board was served upon the State or the local educational agency unless before that day the State or local educational agency files a petition for judicial review as provided in section 455 of this Act.

(e) A final order of the Board under this section may be enforced, as determined by the Commissioner, by—

(1) the withholding of any portion of the amount payable, including amounts payable for administrative costs, under the affected program to the State or the local educational agency against which the final order has been issued, or

(2) the Commissioner certifying the facts to the Attorney General whose duty it shall be to cause appropriate proceeding to be brought for the enforcement of the order.

JUDICIAL REVIEW

SEC. 455. (a) Any recipient of funds under an applicable program that would be adversely affected by any action under section 452, 453, or 454 of this Act, and any State entitled to receive funds under a program listed in section 435(a) of this title whose application therefor has been disapproved by the Commissioner, shall be entitled to judicial review of such action in accordance with the provision of this section.

(b) Any State, local educational agency, or other recipient entitled to judicial review under subsection (a) that desires such review of any action by the Commissioner or the Board qualifying for review under this section shall, within sixty days of that action, file with the United States Court of Appeals for the circuit in which that State, local educational agency, or other recipient is located, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which the action was based, as provided in section 2112 of title 28, United States Code.

(c) The findings of fact by the Board, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Board to take further evidence, and the Board may thereupon make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(d) The court shall have jurisdiction to affirm the action of the Board or the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

USE OF RECOVERED FUNDS

SEC. 456. (a) Whenever the Commissioner has recovered funds following a final audit determination with respect to any applicable program, he may consider those funds to be additional funds available for that program and may arrange to repay to the State or the local agency affected by that action not to exceed 75 percent of those funds upon his determination that—

(1) the practices or procedures of the State or local agency that resulted in the audit determination have been corrected, and that the State or the local agency is in all other respects in compliance with the requirement of that program;

(2) the State or the local agency has submitted to the Commissioner a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) the use of those funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally granted.

(b) Any payments by the Commissioner under this section shall be subject to such other conditions as the Commissioner deems necessary to accomplish the purposes of the affected programs, including—

(1) the submission of periodic reports on the use of funds provided under this section; and

(2) consultation by the State or local agency with parents or representatives of the population that will benefit from the payments.

(c) Notwithstanding any other provisions of law, the Commissioner may authorize amounts made available under this section to remain available for expenditure, subject to such conditions as he deems appropriate, for up to three fiscal years following the fiscal year in which the audit determination referred to in subsection (a) was made.

(d) At least thirty days prior to entering into an arrangement under this section, the Commissioner shall publish in the Federal Register a notice of his intent to do so and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least thirty days to submit comments to the Commissioner regarding the proposed arrangement.

FEDERAL REGISTER

The Following pages (1-15) contain material protected by the Copyright Act of 1976 (17 U.S.C.): Federal Register, Appendix B, v 47, no. 224, November 19, 1982: Rules and Regulations

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 298

Chapter 2 of the Education Consolidation and Improvement Act of 1981

AGENCY: Education Department.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for activities authorized under Subchapters A, B, and C of Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA). These regulations allow State and local educational agencies maximum flexibility to administer funds and design programs under these subchapters of Chapter 2. These regulations replace the final regulations published on July 29, 1982.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after they are published in the Federal Register. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Allen King, Deputy Director, Division of Educational Support Services, Office of Elementary and Secondary Education, 400 Maryland Avenue, S.W. (Room 1725 Donohoe Building), Washington, D.C. 20202. Telephone: (202) 245-8223.

SUPPLEMENTARY INFORMATION:

A. Purpose of Chapter 2 Consolidation

Chapter 2 of the ECIA ("Chapter 2") was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 2 consolidates 28 education grant programs funded in fiscal year 1981 into a single authorization of grants to States. As stated in Section 561(a) of the ECIA, the programs consolidated are:

- (1) titles II, III, IV, V, VI, VIII, and IX (except part C) of the Elementary and Secondary Education Act of 1965;
- (2) the Alcohol and Drug Abuse Education Act;
- (3) part A and section 532 of title V of the Higher Education Act of 1965;
- (4) the Follow Through Act (on a phased basis);
- (5) section 3(a)(1) of the National Science Foundation Act of 1950 relating to precollege science teacher training; and
- (6) the Career Education Incentive Act.

Section 561(b) of Chapter 2 declares the legislative purpose of Chapter 2 to be the transfer of authority and

responsibility to State and local educational agencies. It states:

The basic responsibility for the administration of funds made available under this chapter is in the State educational agencies, but it is the intent of Congress that this responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under the chapter shall be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel because they have the most direct contact with students and are most directly responsible to parents.

The final regulations are designed to implement these purposes.

B. Authority to Issue Chapter 2 Regulations

Chapter 2 does not require the Secretary to publish regulations to implement any of its provisions. In fact, Section 591(a) of the ECIA substantially limits the authority of the Secretary to issue regulations under Chapter 2. The Secretary is authorized to issue regulations only if they—

- (1) Relate to the discharge of duties specifically assigned to the Secretary;
- (2) Relate to proper fiscal accounting and payment methods; or
- (3) Are deemed necessary "to reasonably insure that there is compliance with the specific requirements and assurances" in Chapter 2.

In accordance with these provisions, the Secretary concludes that regulations for the Chapter 2 program are needed only to cover the following subjects:

- How a State or local educational agency obtains funds under Chapter 2 (Subpart A);
- Fiscal requirements that a State or local educational agency must meet (Subpart B);
- How children enrolled in private schools participate in Chapter 2 programs (Subpart C); and
- Due process procedures (Subpart D).

On July 29, 1982, the Secretary issued final regulations governing the activities authorized under Subchapters A, B, and C of Chapter 2 (47 FR 32884). The final regulations in this document revise 34 CFR Part 298 published on July 29 to read as set forth below. The revised regulations reflect the Secretary's decision that the General Education Provisions Act (GEPA) generally applies to Chapter 2. This decision is discussed below in the "Application of other statutes and regulations" section.

The following paragraphs provide a summary description of the Chapter 2 statute and final regulations.

C. Summary of Program: Distribution of Funds to SEAs and LEAs

Before a State may receive Chapter 2 funds, the State must meet two requirements. First, it must establish a State Advisory Committee that meets the requirements for representation in Section 564(a)(2) of Chapter 2. Section 564(a)(2) describes the composition and functions of the committee. The final regulations add no requirements to this statutory process. However, they do describe circumstances under which a State may use an existing organization to serve as the advisory committee.

Previously, the Secretary encouraged Governors to appoint their State Advisory Committees as early as possible. He indicated that any pre-grant costs incurred for expenses of State Advisory Committees prior to July 1, 1982 could be paid from available resources and those accounts reimbursed after July 1 from a State's Chapter 2 funds. In addition, those costs could be paid from funds appropriated in fiscal year 1981 to implement Title V-B of the Elementary and Secondary Education Act of 1965.

Second, the State must submit an application to the Secretary. The application must designate the State educational agency (SEA) as the State agency responsible for the administration and supervision of programs assisted under Chapter 2, set forth the planned allocation of funds in accordance with Section 564(a)(1), and meet other minimum statutory requirements contained in Section 564(a)(4)-(7). The Secretary requires no particular form of application.

After the Secretary checks to ensure that the application meets the statutory requirements, the Secretary provides a grant award to the State for an amount computed on the basis of the school-age population in the State compared to the school-age population of all States in accordance with Section 563 of Chapter 2.

Under Section 565, the SEA must distribute at least 80 percent of the funds it receives to the local educational agencies (LEAs) in the State in proportion to the relative enrollments in public and private schools in those agencies, "adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child. . .". Section 565(a) lists several examples of "high-cost" children but the examples are not exclusive. The Secretary issues

no regulatory requirements or standards for evaluating State criteria under Section 585 in carrying out this function, the Secretary approves criteria that are reasonably calculated to produce an equitable distribution of funds with reference to the factors listed in Section 585(a).

To receive its allocation from the SEA, an LEA must have on file with the SEA an application which "sets forth the planned allocation of funds . . ." in accordance with Section 586(a)(1) and meets other minimum statutory requirements stated in Section 586. An SEA or LEA may use Chapter 2 funds for the purposes described in Subchapters A through C of Chapter 2. These three Subchapters are titled—

Subchapter A—Basic Skills Development

Subchapter B—Educational Improvement and Support Services; and
Subchapter C—Special Projects.

Chapter 2 contains no set-asides or other requirements that an SEA or LEA allocate a particular portion of its funds to any of the purposes stated in Subchapters A through C. An SEA or LEA is free to distribute its funds among the range of purposes stated in these subchapters as it sees fit.

In general, the SEA is responsible for the administration and supervision of programs assisted with Chapter 2 funds. However, under Section 586(c), each LEA has "complete discretion, subject only to the provisions of [Chapter 2], in determining how funds the agency receives . . . shall be divided among the purposes of [Chapter 2] in accordance with the application submitted under [Section 586(a)]."

D. Fiscal Requirements

Section 585 of Chapter 2 contains provisions regarding maintenance of effort and use of Federal funds to supplement and not supplant State and local funds. Under Section 585(a)(1), the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year may not be less than 90 percent of the combined fiscal effort per student or aggregate expenditures for the second preceding fiscal year. Section 585(a)(2) calls for proportional reduction of a State's Chapter 2 allocation if a State fails to meet this requirement. Section 585(a)(3) allows the Secretary to waive the requirement for one year, if the waiver is equitable due to exceptional or uncontrollable circumstances. The Conference Report, however, indicates that the Secretary may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances. 127

Cong. Rec. H5845 (daily ed. 1981).

Section 585(b) states the supplement, not supplant principle that applies to Chapter 2.

Section 586(b) of the ESEA specifically made Section 412(b) of GEPA applicable to Chapter 2. Section 412(b) allows SEAs and LEAs to "carry over" Chapter 2 funds—that is, to use them either in the fiscal year for which the funds were appropriated or in the succeeding fiscal year.

Because representatives of SEAs and LEAs, in meetings with staff members of the Department, have been particularly concerned regarding the need for guidance on these provisions and because Section 585(c) of Chapter 2 specifically invites the issuance of regulations, the Secretary issues minimal regulations on a number of key points on these subjects. These regulations are designed to afford greater flexibility and maximum discretion to SEAs and LEAs in meeting the fiscal requirements described above. The pertinent regulations are contained in Subpart B.

E. Participation of Children Enrolled in Private Schools

Chapter 2 makes extensive provision for the equitable participation of children enrolled in private schools. Sections 586 (d) and (e) provide that the Secretary may arrange for services to private school children if an SEA or LEA is prohibited by law or "has substantially failed or is unwilling" to provide services on an equitable basis for them.

Because Chapter 2 assigns to the Secretary a special duty regarding the equitable provision of Chapter 2 services to children enrolled in private schools, the Secretary gives guidance in these final regulations regarding a limited number of questions which have been frequently raised and which knowledgeable persons, including representatives of private school children, believe require clarification. This clarification is needed to ensure full compliance with the specific provisions which Congress has enacted to protect the rights of private school children to share in Chapter 2 services.

Among the matters clarified in Subpart C of these final regulations are: responsibility of SEAs and LEAs to provide services; consultation with private school officials; determination of needs, number of children, and types of services; factors used in determining equitable participation; use of public school employees on other than public school premises; and public supervision and control of funds and equipment.

F. Due Process Procedures

As indicated above, the Secretary issues final regulations to afford due process protections to SEAs and LEAs in the event that disputes arise in the following areas:

- By-pass determinations under Section 588(d)-(h).
- Final audit determinations under Section 452 of GEPA.
- Determinations to withhold funds under Section 592.
- Cease and desist complaints under Section 454 of GEPA.

By-pass procedures contained in the final regulations are designed to provide a brief procedural guide to enable an affected SEA or LEA to challenge a by-pass determination by the Secretary.

Procedures regarding adverse audit determinations and cease and desist complaints are modeled on current regulations providing SEAs with highly-developed appeal rights before the Education Appeal Board. However, the final regulations shorten and simplify these procedures and specifically tailor them for the Chapter 2 program.

The final regulations provide for withholding proceedings under Section 592 before the Education Appeal Board but require, in keeping with the mandate of Section 592, that these proceedings be conducted in accordance with the provisions of the Administrative Procedure Act.

G. Additional Guidance

The Secretary has recognized a need and a responsibility to provide further nonregulatory guidance with respect to various questions that have been frequently raised by representatives of SEAs and LEAs. The Secretary, therefore, is preparing, and plans to distribute widely, a final document designed to provide further nonregulatory guidance with respect to the provisions in Chapter 2. This material will provide information to enable SEAs and LEAs to meet the requirements of the statute.

The guidance in the document will be binding on all officials of the Department. It will not, however, be binding on SEAs and LEAs. It will clearly indicate that State and local officials are free to develop—indeed are encouraged to develop—alternative approaches that are consistent with the statute and regulations but may be more in keeping with their particular needs and circumstances.

H. Application of Other Statutes and Regulations

(1) As the Secretary interprets other applicable statutes, recipients of grant funds under Chapter 2 are recipients of Federal financial assistance under the civil rights laws. Therefore, those statutes, as well as regulations implementing those statutes, apply to Chapter 2 programs. The civil rights regulations are found in 34 CFR Parts 100, 104, and 106. Although regulations implementing the Age Discrimination Act of 1975 have not yet been published, recipients of Chapter 2 funds must comply with the provisions of that Act.

(2) The preamble of the regulations published on July 29, 1982 indicated that, except for the sections of GEPA that were specifically made applicable by Section 593 of the ECIA, the provisions of GEPA did not apply to Chapter 2. This determination was made because Section 593 of the ECIA is ambiguous on the issue of GEPA applicability and because of the concern that Chapter 2 be kept as free as possible from the imposition of detailed and sometimes conflicting requirements in GEPA that would decrease the flexibility and increase the burden on SEAs and LEAs in carrying out their Chapter 2 responsibilities.

In light of all comments received, the Secretary has now reconsidered this determination following publication of the regulations on July 29. In reconsidering the matter, the Secretary has been concerned that continuing controversy over the issue of GEPA applicability to Chapter 2 would impair the smooth and efficient implementation of the program. Therefore, subject to the exceptions stated below, the Secretary adopts the interpretation that GEPA is applicable to Chapter 2. The Department will carry out its administrative role under Chapter 2 in light of that determination.

Even though GEPA generally applies to Chapter 2, some specific provisions of GEPA are inapplicable as a matter of law because they are specifically made inapplicable by the ECIA, because they are superseded by specific provisions of the ECIA, or for other reasons explained below. Other provisions of GEPA, though not inapplicable, have been superseded by the Department of Education Organization Act or are otherwise irrelevant to the operation of the Chapter 2 program. After a careful reconsideration of the ECIA and its legislative history, the Secretary interprets the following sections of GEPA as inapplicable to Chapter 2 as a matter of law:

(a) Section 408(a)(1) of GEPA (authorizing the Secretary to promulgate regulations), 20 U.S.C. 1231e-3(a)(1), is superseded by Section 591(a) of the ECIA.

(b) Section 425 of GEPA, 20 U.S.C. 1232b-2, provides complex procedures regarding certain actions by an SEA that affect applicants or recipients under an applicable program. Section 425 also provides for Federal review of an SEA's action under that section. The Secretary believes that this provision was not intended to apply to Chapter 2. Section 425 only applies to programs in which assistance is provided "in accordance with a State plan approved by the Secretary." Chapter 2 is not such a program. Further, Section 425 of GEPA is clearly at odds with Section 561 of Chapter 2 which provides: "The basic responsibility for administration of funds made available [under Chapter 2] is in the State educational agencies." It is also inconsistent with the general congressional objective to reduce Federal involvement in the administration of this program.

(c) Section 429(a) of GEPA (relating to technical assistance from the Department), 20 U.S.C. 1231c(a), is superseded by Section 591(b) of the ECIA.

(d) Section 427 of GEPA, 20 U.S.C. 1231d, directs the promulgation of Federal regulations or criteria relating to parental participation where the Secretary determines that such participation at the State or local level will increase the effectiveness of a Federal program. The Secretary believes that Section 427 should not be invoked with respect to Chapter 2 even in the context of a determination of general GEPA applicability. The matter of parental involvement is covered in Sections 584(a)(2)(C) and 588(a)(4) of Chapter 2, and the Secretary regards these sections as preemptive and rendering unnecessary the issuance of regulations or criteria under Section 427 of GEPA.

(e) Section 430 of GEPA (regarding applications to receive Federal financial assistance), 20 U.S.C. 1231g, is superseded by Sections 584 (State applications) and 586 (Local applications) of Chapter 2.

(f) Section 431A of GEPA (relating to maintenance of effort determinations), 20 U.S.C. 1232-1, is inapplicable by its terms and, in any event, is superseded by Section 585(a) of Chapter 2 relating to the same topic.

(g) In accordance with Section 596(a) of the ECIA, Sections 434 (SEA monitoring and enforcement), 435 (single State application), and 436 (single LEA

application) do not apply except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds).

The provision in Section 434 of GEPA which applies to Chapter 2 is in paragraph (a)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. The Secretary has decided not to require such a plan for audits of the Chapter 2 program. Section 435 of GEPA applies to Chapter 2 only with respect to paragraphs (b)(2) and (b)(5), which pertain to two assurances concerning fiscal control and fund accounting procedures that are required to be filed in a "single State application." Section 436 of GEPA applies to Chapter 2 with regard to similar assurances in paragraphs (b)(2) and (b)(3) filed in "single local applications." If SEAs and LEAs have filed these applications, the assurances do not have to be filed again.

(h) Section 437(b) of GEPA (relating to access to records), 20 U.S.C. 1232f(b), is superseded by Section 1744 of the Omnibus Budget Reconciliation Act of 1981.

(i) Section 453 of GEPA (relating to withholding), 20 U.S.C. 1234b, is superseded by Section 592 of the ECIA relating to the same topic.

(j) The judicial review provisions of Section 593 of the ECIA are controlling with respect to judicial review of withholding actions under Section 592 of the ECIA. Therefore, Section 455 of GEPA, 20 U.S.C. 1234d, is superseded to the extent that it applies to withholding actions under Chapter 2.

(3) Sections 1741 (relating to the distribution of block grant funds), 1742 (relating to reports on the proposed use of funds and public hearings), and 1743 (relating to transition provisions) of the Omnibus Budget Reconciliation Act of 1981 do not apply to Chapter 2. Sections 1744 (relating to access to records by the Comptroller General) and 1745 (relating to State auditing requirements) do apply, and their provisions have been incorporated in §§ 298.16 and 298.17 of this Part.

(4) The Education Department General Administrative Regulations (EDGAR) do not apply to programs under Chapter 2. EDGAR includes 34 CFR Part 76, which deals with State-administered programs, and 34 CFR Part 74, which implements OMB Circulars A-21, A-87, A-102, and A-110. Rather than complying with the provisions contained in these parts, States may apply equivalent procedures of their own for financial management and control of their programs. However, States

continuing to comply with the provisions in 34 CFR Part 74 will be considered to be in compliance with the fiscal control and fund accounting procedures required by Sections 433 and 436 of GEPA that are applicable to Chapter 2. In addition, States may follow the provisions in 34 CFR 74.62, which implements Attachment P to OMB Circular A-102, to satisfy the audit requirements in Section 1743 of the Omnibus Budget Reconciliation Act of 1981 and § 298.17 of these final regulations. The parts of EDGAR that do not apply to Chapter 2 also include 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) and Part 78 (Education Appeal Board).

L Use of "Carryover Funds" From Programs Being Consolidated

The Secretary interprets Section 514(b)(2)(B) of the Omnibus Education Reconciliation Act of 1981 to permit SEAs and LEAs that had unobligated funds on July 1, 1982 that were appropriated in an appropriation act for Fiscal Year 1981 and were intended for their use under the antecedent programs to retain these funds for expenditure and use. These funds are available for obligation until September 30, 1983 under Section 410(b) of GEPA. Although Section 514 requires SEAs and LEAs to expend and use their unobligated funds in accordance with the purposes of Chapter 2, the Secretary does not interpret this section to require these agencies to allocate their unobligated funds according to the formula in Section 565(a) of Chapter 2. As a result, SEAs that have unobligated funds intended for their use under the antecedent programs, such as "State strengthening" funds under Title V of the Elementary and Secondary Education Act of 1963, may expend and use those funds in accordance with the purposes of Chapter 2 without distributing at least 80 percent of them to LEAs. Likewise, LEAs do not need to return their unobligated funds to the SEA for distribution under the Chapter 2 formula.

Under the Secretary's interpretation, unobligated funds are to be expended and used by those agencies for whose use under the antecedent programs the funds were intended. Thus, any categorical funds intended for LEAs in the 1981 appropriation but not awarded by SEAs as of July 1, 1982 shall be awarded to LEAs. These funds may be allocated in accordance with the distribution formula for the LEA portion of Chapter 2 funds or to those LEAs that would have received them under the antecedent programs.

Because Section 514(b)(2)(B) only pertains to SEAs and LEAs, any institutions of higher education or other recipients of subgrants or contracts under the antecedent programs are not affected by Section 514. Therefore, these subgrantees or contractors shall continue to operate their grants or contracts according to the terms and conditions under which they were received.

Public Participation

Over fifty letters containing more than 200 individual comments were received. Comments were also received in the course of briefing sessions conducted by the Department for State and local officials. Comments, responses to comments, and a summary of changes made in the final regulations are described in the Appendix to these regulations. Responses have been revised as appropriate to reflect the Secretary's interpretation regarding the applicability of GEPA. The Appendix will not appear in the Code of Federal Regulations.

Comments received from SEAs and their representatives were favorable and generally indicated a recognition that the Secretary had accomplished the goal of substantially reducing regulatory burden. As one commenter noted, "We applaud the efforts of the U.S. Department of Education to reflect in its proposed regulations for Chapter 2 of ESEA the intent of Congress in granting State and local educational agencies greater flexibility to address Federal education priorities."

The Secretary has carefully considered all comments received and has made changes warranted by the comments. The changes made are relatively limited in nature and are designed to clarify technical matters raised by the commenters. The basic approach of the regulations and the objective of providing maximum flexibility to SEAs and LEAs have been preserved.

In addition, since publication of the July 29, 1982 regulations, the Secretary has made a number of changes in legal citations and other technical amendments to reflect the Secretary's determination that GEPA generally applies to Chapter 2. Since the changes are only technical, no further public comment is being requested. In any case, the issue of GEPA applicability has been fully debated in the rulemaking process just completed, and further comment is therefore unnecessary under 5 U.S.C. 553.

Paperwork Reduction Act of 1980

Information collection requirements contained in § 298.15 of these regulations have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-341) and have been assigned OMB control number 18100053. This control number appears as a citation following the appropriate paragraphs.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291 and are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect small LEAs receiving Federal financial assistance under Chapter 2. However, the regulations will not have a significant economic impact on the small LEAs affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The regulations impose minimal requirements to ensure the proper allocation and expenditure of program funds. Wherever possible, SEAs will have maximum authority and responsibility for supervising LEAs and administering the program. Program funds may be used for LEA administrative expenses. For these reasons the regulations will not have a significant economic impact on the small entities affected.

Education Impact Statement

The Secretary has examined the record of the rulemaking proceeding for these regulations and has determined that the regulations do not require any information to be transmitted that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 235

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—

education, Private schools, State administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the regulations. Unless otherwise noted, the citations refer to sections of the Education Consolidation and Improvement Act of 1981.

(Catalog of Federal Domestic Assistance No. 84.151; Chapter 2 of the Education Consolidation and Improvement Act of 1981)

Dated: November 9, 1982.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 298 of Title 34 of the Code of Federal Regulations to read as follows:

PART 298—CHAPTER 2 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

Subpart A—How a State or Local Educational Agency Obtains Funds Under Chapter 2

Sec.

- 298.1 Purpose.
- 298.2 Definitions.
- 298.3 General responsibilities of State and local educational agencies.
- 298.4 State applications.
- 298.5 Allotments to States of Chapter 2 funds.
- 298.6 State advisory committee.
- 298.7 LEA applications.
- 298.8 Allocation of Chapter 2 funds to LEAs.
- 298.9 Reallocation.
- 298.10 Use of Chapter 2 funds.

Subpart B—Fiscal Requirements That a State or Local Educational Agency Must Meet

- 298.11 Maintenance of effort.
- 298.12 Waiver of the maintenance of effort requirement.
- 298.13 Supplement, not supplant.
- 298.14 Availability of funds.
- 298.15 Recordkeeping requirements.
- 298.16 Federal audits and access to records.
- 298.17 State audits.
- 298.18 Compromise of audit claims.
- 298.19 Commingling of funds.
- 298.20 [Reserved]

Subpart C—How Children Enrolled in Private Schools Participate in Chapter 2 Programs

- 298.21 Responsibility of SEAs and LEAs.
- 298.22 Consultation with private school officials.
- 298.23 Needs, number of children, and types of services.
- 298.24 Factors used in determining equitable participation.
- 298.25 Funds not to benefit a private school.
- 298.26 Use of public school employees.
- 298.27 Equipment and supplies.
- 298.28 Construction.
- 298.29–298.30 [Reserved]

Subpart D—Due Process Procedures Procedures for By-Pass

- 298.31 By-pass—General.
- 298.32 Notice by the Secretary.
- 298.33 By-pass procedures.
- 298.34 Appointment and functions of a hearing officer.
- 298.35 Hearing procedures.
- 298.36 Post hearing procedures.
- 298.37–298.40 [Reserved]

Other Due Process Procedures

- 298.41 General.
- 298.42 Jurisdiction.
- 298.43 Definitions.
- 298.44 Eligibility for review.
- 298.45 Written notice.
- 298.46 Filing an application for review of a final audit determination or a withholding hearing.
- 298.47 Review of the written notice.
- 298.48 Acceptance of the application.
- 298.49 Rejection of the application.
- 298.50 Intervention.
- 298.51 Practice and procedure.
- 298.52 The Panel's decision.
- 298.53 Opportunity to comment on the Panel's decision.
- 298.54 The Secretary's decision.
- 298.55 Cease and desist hearing.
- 298.56 Cease and desist written report and order.
- 298.57 Enforcement of a cease and desist order.

Authority: Secs. 561–596 of Pub. L. No. 97–35, 95 Stat. 462–482 (20 U.S.C. 3811–3875), unless otherwise noted.

Subpart A—How a State or Local Educational Agency Obtains Funds Under Chapter 2

§ 298.1 Purpose.

The regulations in this Part implement the consolidation of Federal program activities for elementary and secondary education at the State and local level contained in Subchapters A, B, and C of Chapter 2 of the Education Consolidation and Improvement Act of 1981 (Chapter 2).

(Sec. 561, 20 U.S.C. 3811)

§ 298.2 Definitions.

(a) The following definitions contained in Section 595 of Chapter 3 of the Education Consolidation and Improvement Act of 1981 apply to the regulations in this part:

State
Secretary
State educational agency
Local educational agency
Parent
Free public education
Elementary school
Secondary school
Construction
Equipment
School facilities

(b) Additional definitions pertaining to the due process procedures in

§§ 298.41–298.57 are found in § 298.43 of these regulations.

(c) The definitions in 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) do not apply to the regulations in this part. (Sec. 505, 20 U.S.C. 3875)

§ 298.3 General responsibilities of State and local educational agencies.

(a)(1) Except as provided in paragraph (b) of this section, a State educational agency (SEA)—

(i) Has the basic responsibility for the administration of funds made available under Chapter 2; and

(ii) Is the State agency responsible for the administration and supervision of programs assisted with Chapter 2 funds.

(2) To carry out its responsibilities, an SEA may, in accordance with State law, adopt rules, regulations, procedures, guidelines, and criteria regarding the use of Chapter 2 funds, provided that those rules, regulations, procedures, guidelines, and criteria do not conflict with the provisions of—

(i) Chapter 2;

(ii) The regulations in this Part; or

(iii) Other applicable Federal statutes and regulations.

(b) Section 566(c) of Chapter 2 provides that each local educational agency (LEA) has complete discretion, subject only to the provisions of Chapter 2, in determining how funds the agency receives under Section 565(a) of Chapter 2 are divided among the purposes of Chapter 2 in accordance with the LEA's Chapter 2 application.

(Sec. 561(b), 20 U.S.C. 3811(b); Sec. 584, 20 U.S.C. 3814; Sec. 566(c), 20 U.S.C. 3816(c))

§ 298.4 State applications.

(a) (1) Any State that desires to receive a grant under Chapter 2 shall file an application with the Secretary that meets the requirements in Section 564 of Chapter 2.

(2) The application may be submitted in any form that the State determines is appropriate.

(b)(1) A State shall file its Chapter 2 application for a period not to exceed three years.

(2) If a State that submits an application covering more than one year makes any substantial changes in its application, the State shall—

(i) File a new application; or

(ii) Annually amend its current application to reflect those changes.

(c) In addition to the other requirements in Section 564 of Chapter 2, a State's application must provide, beginning with fiscal year 1984, for an annual evaluation of the effectiveness of programs assisted under Chapter 2.

which shall include comments of the State Advisory Committee, and shall be made available to the public. The first evaluation covers the school year 1983-1984.

(Sec. 564, 20 U.S.C. 3814)

§ 298.5 Allocations to States of Chapter 2 funds.

(a) From the funds appropriated under Chapter 2 for any fiscal year, the Secretary—

(1) Reserves an amount that does not exceed one percent of the Chapter 2 appropriation for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs. If no more reliable data are available, the Secretary determines respective needs according to the relative enrollments in public and private schools within each territory;

(2) Reserves an additional amount that does not exceed six percent of the Chapter 2 appropriation to carry out the purposes of Subchapter D of Chapter 2 (Secretary's Discretionary program); and

(3) Allots to each State an amount that bears the same ratio to the amount remaining after the funds in paragraphs (a) and (b) of this section are reserved as the school-age population of the State bears to the school-age population of all States, except that no State receives less than 0.3 percent of the remaining funds.

(b) For purposes of this section, the term—

(1) "School-age population" means the population aged five through seventeen; and

(2) "States" include the fifty States, the District of Columbia, and Puerto Rico.

(Sec. 563, 20 U.S.C. 3813)

§ 298.6 State advisory committee.

(a) Any State that desires to receive funds under this program shall establish an advisory committee that meets the requirements in Section 564(a)(2) of Chapter 2.

(b) The Secretary interprets Section 564(a)(2) of Chapter 2 to permit any existing organization, including a State board of education, to be the advisory committee for the purpose of paragraph (a) of this section if the organization—

(1) Is not the SEA under State law;

(2) Is appointed by the Governor to be the advisory committee; and

(3) Meets the representation requirements of Section 564(a)(2) of Chapter 2.

(c) The State advisory committee advises the SEA on—

(1) The allocation among authorized functions of funds reserved for State use under Section 563(a) of Chapter 2;

(2) The formula for the allocation of funds to LEAs; and

(3) The planning, development, support, implementation, and evaluation of State programs assisted under Chapter 2.

(Sec. 564, 20 U.S.C. 3814)

§ 298.7 LEA applications.

(a) An LEA may receive its allocation of funds under Chapter 2 for any year for which it has on file with the SEA an application that meets the requirements in Section 565 of Chapter 2.

(b)(1) An LEA shall file its Chapter 2 application for a period not to exceed three years.

(c) If an LEA that submits an application covering more than one year makes any substantial changes in its application, the LEA shall—

(i) File a new application; or

(ii) Annually amend its current application to reflect those changes.

(c) In addition to the other requirements in Section 565 of Chapter 2, and LEA's application must provide for systematic consultation, in the allocation of funds for programs authorized by Chapter 2 and in the design, planning, and implementation of these programs, with—

(1) Parents of children attending elementary and secondary schools in the area served by the LEA;

(2) Teachers and administrative personnel in those schools; and

(3) Other groups as the LEA deems appropriate.

(Sec. 565, 20 U.S.C. 3815)

§ 298.8 Allocation of Chapter 2 funds to LEAs.

(a) An SEA shall distribute to each LEA that has submitted an application as required in § 298.7 the amount of its allocation as determined under paragraph (b) of this section.

(b) From the funds made available each year under Chapter 2, an SEA shall distribute not less than 80 percent to LEAs within the State according to the relative enrollments in public and nonpublic schools within the school districts of those agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to LEAs that have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as—

(1) Children from low-income families;

(2) Children living in economically depressed urban and rural areas; and

(3) Children living in sparsely populated areas.

(c) In accordance with Section 565 of Chapter 2 and paragraph (b) of this section, an SEA must adjust its formula to provide higher allocations to LEAs with the greatest numbers or percentages of "high-cost" children. The Secretary interprets Section 565 of Chapter 2 to require a State to provide an allocation to an LEA otherwise eligible even though it has no "high-cost" children.

(d) The Secretary approves the SEA's criteria for adjusting allocations to LEAs if the criteria are consistent with Section 565 of Chapter 2 and reasonably calculated to produce an equitable distribution of funds with reference to the factors contained in paragraph (b) of this section.

(Sec. 565, 20 U.S.C. 3815)

§ 298.9 Reallocation.

(a) An SEA may reallocate to other LEAs Chapter 2 funds—

(1) From an LEA that—

(i) Does not participate in the Chapter 2 program; or

(ii) Has Chapter 2 funds that exceed the amount required to—

(A) Operate its Chapter 2 projects effectively during the current fiscal year; and

(B) Provide a prudent and justifiable reserve of Chapter 2 funds for operating its Chapter 2 projects effectively during the next fiscal year; or

(C) That are recovered by the State based on a determination by the State that the LEA has failed to spend Chapter 2 funds in accordance with applicable law.

(b) A reallocation of funds under this section—

(1) May be made only during the fiscal year for which the funds were appropriated or during the succeeding fiscal year;

(2) Must be reallocated consistent with the purposes of Chapter 2; and

(3) Must be spent consistent with the requirements in Chapter 2 and the regulations in this part.

(Sec. 565, 20 U.S.C. 3815)

§ 298.10 Use of Chapter 2 funds.

SEAs and LEAs may use Chapter 2 funds for any activities that are consistent with the purposes of Chapter 2, including—

(a) Basic skills development under Subchapter A;

(b) Educational improvement and support services under Subchapter B; and

(c) Special projects under Subchapter C.

(Sec. 571-582, 20 U.S.C. 3821-3842)

Subpart B—Fiscal Requirements That a State or Local Educational Agency Must Meet

§ 298.11 Maintenance of effort.

(a) *Basic standard.* Except as provided in § 298.12, the Secretary pays a State its full allocation of funds under Chapter 2 if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or aggregate expenditures for the second preceding fiscal year.

(1) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1982, if a State is using the Federal fiscal year, the "preceding fiscal year" is fiscal year 1981 (which began on October 1, 1980). If a State is using a fiscal year that begins on July 1, 1982, the "preceding fiscal year" is the twelve-month fiscal period ending on June 30, 1981.

(2)(i) *Expenditures to be considered.* The expenditures the Secretary considers in determining a State's compliance with the maintenance of effort requirement in this paragraph are State and local expenditures for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities.

(ii) *Expenditures not to be considered.* The Secretary does not consider the following expenditures in determining a State's compliance with the maintenance of effort requirement in this paragraph:

(A) Any expenditures for community services, capital outlay, or debt services.

(B) Any expenditures of Federal funds.

(b) *Failure to maintain effort.* (1) If a State fails to maintain effort and a waiver under § 298.12 is not appropriate, the Secretary reduces the State's allocation of funds under Chapter 2 in the exact proportion to which the State fails to meet 90 percent of both the State's combined fiscal efforts per student or aggregate expenditures (using

the measure most favorable to the State) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State failed to maintain effort, the Secretary considers the fiscal effort for the second preceding fiscal year to be 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

Example: In Federal fiscal year 1983, a State fails to maintain effort because its fiscal effort in the preceding fiscal year (1981) (see § 298.11(a)(1)) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980); then, in the following fiscal year (1984), the State's fiscal effort in the second preceding year (1981) would be considered to be 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 585(a), 20 U.S.C. 3861(a))

§ 298.12 Waiver of the maintenance of effort requirement.

(a) *Waiver request.* A State that has not maintained its fiscal effort as required in § 298.11(a) may ask the Secretary to grant a waiver of that requirement by submitting a waiver request that includes—

(1) A statement of the combined fiscal effort per student and the aggregate expenditures for the two fiscal years being compared; and

(2) A description of the circumstances that the State considers to be exceptional or uncontrollable.

(b) *Secretary's criteria.* (1) The Secretary may grant a waiver, for one year only, of the maintenance of effort requirement in § 298.11(a) if the Secretary determines that the waiver is equitable due to exceptional or uncontrollable circumstances. Exceptional or uncontrollable circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the State; or

(iii) Other exceptional or uncontrollable circumstances.

(2) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(c) *Effect of a waiver.* (1) If the Secretary grants a waiver under paragraph (b) of this section, the Secretary allocates to the affected State its full allocation of Chapter 2 funds.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the Secretary considers the fiscal effort for the second preceding fiscal year to be 90 percent of

the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

Example: In Federal fiscal year 1983, a State secures a waiver because its fiscal effort in the preceding fiscal year (1981) (see § 298.11(a)(1)) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980) due to exceptional or uncontrollable circumstances; then, in the following fiscal year (1984), the State's fiscal effort in the second preceding fiscal year (1981) would be considered to be 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 585(a)(3), 20 U.S.C. 3861(a)(3))

§ 298.13 Supplement, not supplant.

An SEA or LEA that receives Chapter 2 funds—

(a) May use and allocate those funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under Chapter 2, be made available from non-Federal sources; and

(b) May not use Chapter 2 funds to supplant funds from non-Federal sources.

(Sec. 585(b), 20 U.S.C. 3861(b))

§ 298.14 Availability of funds.

(a) An SEA or LEA may obligate funds during the fiscal year for which the funds were appropriated and during the succeeding fiscal year.

(b) The SEA or LEA shall return to the Department any funds not obligated by the end of the succeeding fiscal year.

(c)(1) Chapter 2 funds are obligated when as SEA or LEA—

(i) Commits fund, according to State law or practice, to the support of specific programmatic or administrative activities; and

(ii) Identifies Chapter 2 funds allocated for a particular fiscal year as supporting those specific programmatic or administrative activities.

(2) For purposes of this section, the SEA's distribution of funds to LEAs under Section 585(a) of Chapter 2 is not the obligation of those funds.

(Sec. 596, 20 U.S.C. 3876; Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§ 298.15 Recordkeeping requirements.

(a) Section 584(a)(8) of Chapter 2 requires each State to keep records and provide information to the Secretary as may be required for fiscal audit and program evaluation, consistent with the responsibilities of the Secretary under Chapter 2.

(b) Under Section 586(a)(3) of Chapter 2, each LEA, in its application, must agree to keep records and provide

information to the SEA as may reasonably be required for fiscal audit and program evaluation, consistent with the responsibilities of the SEA under Chapter 2.

(c) All records required under this section must be retained—

(1) For five years after completion of the activity for which the funds were used;

(2) Until all pending audits or reviews concerning the Chapter 2 project have been completed; and

(3) Until all findings and recommendations arising out of any audits or reviews concerning the Chapter 2 project have been finally resolved.

(Sec. 364(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3815(a)(3); Sec. 437(a) of GEPA, 20 U.S.C. 1202(a); OMB Control No. 18100053)

§ 298.16 Federal audits and access to records.

(a) For the purpose of evaluating and reviewing the use of Chapter 2 funds—

(1) The Inspector General of the Department, authorized Department officials, and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that—

(i) Are related to programs assisted with Chapter 2 funds; and

(ii) Are in the possession, custody, or control of SEAs, LEAs, or any grantees of SEAs or LEAs; and

(2) The Inspector General of the Department and the Comptroller General are authorized to conduct audits.

(b)(1) An SEA shall repay to the Department the amount of Chapter 2 funds determined by a Federal audit not to have been spent in accordance with applicable law.

(2) If the Department recovers funds under paragraph (b)(1) of this section during the period in which the misspent Chapter 2 funds are still available for obligation under the terms of Section 412(b) of GEPA (relating to the availability of appropriations), the Department treats the recovered funds as Chapter 2 funds and—

(i) Reallocates those funds to eligible SEAs other than the agency that was found to have misspent the funds; or

(ii) Returns the funds for proper use to the SEA from which they were received.

(Sec. 564(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3815(a)(3); Sec. 1745 of the Omnibus Budget Reconciliation Act of 1981, 21 U.S.C. 1243 note; Sec. 2, 4, and 9 of the Inspector General Act of 1972, Pub. L. No. 95-432 (5 U.S.C. App.); Sec. 223 of the Intergovernmental Cooperation Act of 1962, Pub. L. No. 80-577 (42 U.S.C. 4223))

§ 298.17 State audits.

(a) *Basic requirement.* (1) In accordance with Section 1745 of the Omnibus Budget Reconciliation Act of 1981, each State shall conduct financial and compliance audits of Chapter 2 funds. These audits may be performed by independent State auditors or independent public accountants who meet the standards set out by the Comptroller General.

(2) A State may choose to follow the principles and procedures in 34 CFR 74.82 to meet the audit requirements in this paragraph. If the State does so, it will be deemed to be in compliance with this paragraph.

(b) *Frequency of audit.* A State shall conduct the audits required by paragraph (a) of this section every two years. The first two-year period begins on July 1, 1982.

(c) *Audit standards.* Insofar as is practicable, a State shall conduct the audits required by paragraph (a) of this section in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, activities, and functions.

(d) *Audit remedy.* (1) An LEA, or any other subgrantee shall repay to the SEA the amount of Chapter 2 funds determined by the State not to have been spent in accordance with applicable law.

(i) If the SEA recovers funds under paragraph (d)(1) of this section during the period in which the misspent Chapter 2 funds are still available for obligation under the terms of Section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Chapter 2 funds and—

(A) Reallocate those funds to eligible LEAs other than the agency that was found to have misspent the funds—under the procedures in § 298.9; or

(B) Return the funds for proper use to the LEA from which they were received.

(ii) If the Chapter 2 funds that an SEA recovers under paragraph (d)(1) of this section are no longer available for obligation under the terms of Section 412(b) of GEPA, the SEA shall return those funds to the Department.

(2) An SEA that is found under paragraph (a) of this section to have misspent Chapter 2 funds reserved for State use—

(i) May use those funds for proper Chapter 2 purposes if the funds are still available for obligation under the terms of Section 412(b) of GEPA; or

(ii) Shall return those funds to the Department if the funds are no longer available for obligation under the terms of Section 412(b) of GEPA.

(Sec. 1745, 21 U.S.C. 1243 note)

§ 298.18 Compromise of audit claims.

In deciding whether to compromise audit claims, or in recommending possible compromises to the Department of Justice, the Secretary may take into account—

(a) The cost of collecting the claim;

(b) The probability of the claim being upheld;

(c) The nature of the violation involved;

(d) Whether the practices of the SEA or LEA that resulted in the audit finding have been corrected;

(e) Whether the SEA or LEA is in all other respects in compliance with Chapter 2; and

(f) The extent to which the SEA or LEA agrees to use non-Federal funds to supplement Chapter 2 programs.

(Sec. 564(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3815(a)(3); Sec. 432 of GEPA, 20 U.S.C. 1204a; Federal Claims Collection Act, 31 U.S.C. 931 et seq.; 4 CFR Part 103)

§ 298.19 Commingling of funds.

The funds provided under Chapter 2 may not be commingled with State or local funds.

(Sec. 566(a)(2), 20 U.S.C. 3815(a)(2))

§ 298.20 (Reserved)

Subpart C—How Children Enrolled in Private Schools Participate in Chapter 2 Programs

§ 298.21 Responsibility of SEAs and LEAs.

(a)(1) An LEA shall provide children enrolled in private schools in that LEA with secular, neutral, and nonideological services, materials, and equipment or other benefits as well as assure equitable (as compared to children enrolled in public schools) participation of such private school children in the purposes and benefits of Chapter 2 in accordance with the requirements in §§ 298.22–298.25 and Section 386 of Chapter 2.

(2) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and needs of private school children in the school district of the LEA.

(3) The LEA shall exercise administrative direction and control over Chapter 2 funds and property that benefit children enrolled in private schools.

(4)(i) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, association, agency, or corporation who or which in the provision of those services, is

independent of the private school and of any religious organization.

(ii) This employment or contract must be under the control and supervision of the public agency.

(b)(1) An SEA shall—

(i) Ensure that each LEA complies with the requirements in §§ 298.22–298.28; or

(ii) If no Chapter 2 project is carried out by an LEA, make arrangements—such as through contracts with nonprofit agencies or organizations—under which children in private schools in that LEA are provided with services and materials to the extent that would have occurred if the LEA had received Chapter 2 funds.

(2) If an SEA conducts instructional programs or personnel training programs, it shall comply with these requirements as if it were an LEA.

(c) Under sections 564(a)(3) and 566(a)(1) of Chapter 2, an application by an SEA or LEA must contain the planned allocation of funds required to implement Section 586.

(d) In accordance with Section 585(a)(1) of Chapter 2, the regulations in this subpart only apply to children enrolled in private nonprofit elementary and secondary schools.

(Sec. 586, 20 U.S.C. 3862)

§ 298.22 Consultation with private school officials.

In accordance with Sections 588(a)(1) and 586(b), an LEA receiving Chapter 2 funds shall consult with appropriate private school officials regarding the development and implementation of the Chapter 2 program before the LEA makes any decision that affects the opportunities of private school children to participate in the program.

(Sec. 586(a), (b), 20 U.S.C. 3862(a), (b))

§ 298.23 Needs, number of children, and types of services.

An LEA shall determine the following matters on a basis comparable to that used by the LEA in providing for participation of public school children:

(a) The needs of children enrolled in private schools.

(b) The number of those children who will participate in a Chapter 2 program.

(c) The Chapter 2 services that the LEA will provide to those children.

(Sec. 586, 20 U.S.C. 3862)

§ 298.24 Factors used in determining equitable participation.

(a) *Equal expenditures.* (1)

Expenditures for Chapter 2 programs for children enrolled in private schools must be equal (consistent with the number of children to be served) to expenditures for Chapter 2 programs for children

enrolled in the public schools of an LEA, taking into account the needs of the individual children and other factors that relate to such expenditures.

(2) As the Secretary interprets Chapter 2, in determining whether expenditures are equal under paragraph (a)(1) of this section, an LEA—

(i) May not take into account the extent to which children in private schools generated a portion of the LEA's allocation under § 298.8(b) (relating to "high-cost" children); but

(ii) May take into account differences in the costs per child of meeting the needs of the individual children to be served and other factors that relate to these expenditures, as provided in paragraph (a)(1) of this section.

(b) *Services on an equitable basis.* (1) In addition to meeting the equal expenditures requirement in paragraph (a) of this section, an LEA shall provide for the participation in the Chapter 2 program of children enrolled in private schools on an equitable basis.

(2)(i) In determining whether an LEA is providing for participation on an equitable basis, the services provided to private school children and the services provided to public school children are considered.

(ii) If an LEA uses Chapter 2 funds to concentrate programs for public school children on a particular group, attendance area, or grade or age level, the LEA shall ensure equitable opportunities for participation by children enrolled in private schools who—

(A) Have the same needs as the public school children to be served; and

(B) Are in that group, attendance area, or grade or age level.

(iii) If the needs of children enrolled in private schools are different from the needs of children enrolled in public schools, an LEA shall provide Chapter 2 services for the private school children that address their needs on an equitable basis.

(Sec. 586, 20 U.S.C. 3862)

§ 298.25 Funds not to benefit a private school.

(a) An LEA may only use Chapter 2 funds to provide services that supplement the level of services that would, in the absence of Chapter 2 services, be available to children enrolled in a private school.

(b) An LEA shall use Chapter 2 funds to meet the needs of children enrolled in private schools, but not for the purpose of aiding the private school.

(Sec. 586, 20 U.S.C. 3862)

§ 298.26 Use of public school employees.

An LEA may use program funds to make public employees available in other than public facilities—

(a) To the extent necessary to provide equitable Chapter 2 services designed for children enrolled in a private school; and

(b) If those services are not normally provided by the private school.

(Sec. 586, 20 U.S.C. 3862)

§ 298.27 Equipment and supplies.

(a) To meet the requirements of Section 586(c) of Chapter 2, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with Chapter 2 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for Chapter 2 purposes;

(2) Are used for secular, neutral, and nonideological purposes; and

(3) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 2 purposes; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than Chapter 2 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Sec. 586, 20 U.S.C. 3862)

§ 298.28 Construction.

(a) No Chapter 2 funds may be used to perform repairs, minor remodeling or construction of private school facilities.

(b) An LEA may use Chapter 2 funds to perform repairs, minor remodeling, or construction of public facilities as may be necessary to carry out its responsibilities under this subpart.

(Sec. 586, 20 U.S.C. 3862)

§§ 298.29–298.30 [Reserved]

Subpart D—Due Process Procedures Procedures For By-Pass

§ 298.31 By-pass—General.

(a) The Secretary implements a by-pass if an SEA or LEA—

(1) Is prohibited by law from providing Chapter 2 services for private school children on an equitable basis; or

(2) Has substantially failed, or is unwilling, to provide services for private school children on an equitable basis.

(b) If the Secretary implements a by-pass, the Secretary waives an SEA's or LEA's responsibility for providing Chapter 2 services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the Chapter 2 services for private school children under a by-pass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allotment of Chapter 2 funds provided to the State. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(Sec. 386(d), (e), and (g), 20 U.S.C. 3862 (d), (e), and (g))

§ 298.32 Notice by the Secretary.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA and LEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA and LEA to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the SEA and LEA that they have at least 45 days from receipt of the written notice to submit written objections to the proposed by-pass and to request in writing the opportunity for a hearing to show cause why the by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA and LEA by certified mail with return receipt requested.

(Sec. 386(h), 20 U.S.C. 3862(h))

§ 298.33 By-pass procedures.

Sections 298.34–298.36 contain the procedures which the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(Sec. 386(h), 20 U.S.C. 3862(h))

§ 298.34 Appointment and functions of a hearing officer.

(a) If an SEA or LEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery, or the rule on to validity of any statute or regulation.

(c) The hearing officer notifies the SEA, LEA, and representatives of the private school children of the time and place of the hearing.

(Sec. 386(h), 20 U.S.C. 3862(h))

§ 298.35 Hearing procedures.

(a) At the hearing, a transcript is taken. The SEA, LEA, and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the SEA, LEA, representatives of the private school children, or Department officials.

(Sec. 386(h), 20 U.S.C. 3862(h))

§ 298.36 Post hearing procedures.

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed by-pass should be implemented. The hearing officer sends copies of the decision to the SEA, LEA, representatives of the private school children, and the Secretary.

(b) The SEA, LEA, and representatives of the private school children each may submit written comments on the decision to the Secretary within thirty days from receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(Sec. 386(h), 20 U.S.C. 3862(h))

§§ 298.37–298.40 (Reserved)

Other Due Process Procedures

§ 298.41 General.

Sections 298.41–298.57 contain rules for the conduct of proceedings arising under Chapter 2 regarding—

(a) The review of final audit determinations;

(b) Withholding hearings; and

(c) Cease and desist proceedings.

(Sec. 382, 20 U.S.C. 3872; Sec. 431(a) of GEPA, 20 U.S.C. 1234(a); Sec. 432 of GEPA, 20 U.S.C. 1234a; Sec. 434 of GEPA, 20 U.S.C. 1234c)

§ 298.42 Jurisdiction.

Under Chapter 2, the Education Appeal Board has jurisdiction to—

(a) Review final audit determinations;

(b) Conduct withholding hearings; and

(c) Conduct cease and desist proceedings.

(Sec. 382, 20 U.S.C. 3872; Sec. 431(a) of GEPA, 20 U.S.C. 1234(a); Sec. 432 of GEPA, 20 U.S.C. 1234a; Sec. 434 of GEPA, 20 U.S.C. 1234c)

§ 298.43 Definitions.

For the purposes of §§ 298.41–298.57, the following definitions apply:

"Appellant" means an SEA that requests—

(a) A review of the final audit determination; or

(b) A withholding hearing.

"Authorized Department official" means—

(a) The Secretary; or

(b) A person employed by the Department who has been designated to act under the Secretary's authority.

"Board" means the Education Appeal Board of the Department.

"Board Chairperson" means the Board member designated by the Secretary to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice issued by an authorized Department official disallowing expenditures made by a recipient under Chapter 2.

"Hearing" means any review proceeding conducted by the Board.

"Panel" means an Education Appeal Board Panel, consisting of at least three members of the Board, designated by the Board Chairperson to sit in a case.

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized Department official who issued the final audit determination being appealed, the notice of an intent to withhold funds, or the cease and desist complaint; or

(c) Any person, group, or agency that files an acceptable application to intervene.

"Recipient" means the named party or entity that initially received Federal funds under Chapter 2.

"Withholding" means stopping payment of Federal funds under Chapter 2 to a recipient and stopping the recipient's authority to charge costs under Chapter 2 for the period of time the recipient is in violation of a requirement.

(Sec. 382, 20 U.S.C. 3872; Sec. 431(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 432 of GEPA, 20 U.S.C. 1234a; Sec. 434 of GEPA, 20 U.S.C. 1234c)

§ 298.44 Eligibility for review.

Review under these regulations is available to a recipient of Chapter 2

funds that receives a written notice from an authorized Department official of—

- (a) A final audit determination;
- (b) An intent to withhold funds; or
- (c) A cease and desist complaint.

(Sec. 582, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 298.45 Written notice.

(a) *Written notice of a final audit determination.* (1) An authorized Department official issues a written notice of a final audit determination to a recipient in connection with Chapter 2.

(2) In the written notice, the authorized Department official—

(i) Lists the disallowed expenditures made by the recipient;

(ii) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond;

(iii) Cites the requirements that are the basis for the alleged failure to comply; and

(iv) Advises the recipient that it must repay the disallowed expenditures to the Department or, within 30 calendar days of its receipt of the written notice, request a review by the Board.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(b) *Written notice of an intent to withhold funds.* (1) An authorized Department official issues a written notice to a recipient under Chapter 2 of an intent to withhold funds.

(2) In the written notice, the authorized Department official—

(i) Indicates the reasons why the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Advises the recipient that it may, within 30 calendar days of its receipt of the written notice, request a hearing before the Board.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(c) *Written notice of a cease and desist complaint.* (1) The Secretary issues a written notice of a cease and desist complaint to a recipient under Chapter 2. The cease and desist proceeding may be used as an alternative to a withholding hearing.

(2) In the written notice, the Secretary—

(i) Indicates the reason why the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Gives notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice.

(3) The Secretary sends the written notice to the recipient by certified mail with return receipt requested.

(Sec. 582(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(a) of GEPA, 20 U.S.C. 1234a(a); Sec. 454(a) of GEPA, 20 U.S.C. 1234c(a))

§ 298.46 Filing an application for review of a final audit determination or a withholding hearing.

(a) An appellant seeking review of a final audit determination or a withholding hearing shall file a written application with the Board Chairperson no later than 30 calendar days after the date it receives written notice.

(b) In the application, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(Sec. 582(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 298.47 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination or the intent to withhold funds after an application is received under § 298.46 to ensure that the written notice meets the applicable requirements in § 298.45.

(b) If the Board Chairperson decides that the written notice does not meet the applicable requirements in § 298.45, the Board Chairperson—

(1) Returns the determination to the official who issued it so that the determination may be properly modified; and

(2) Notifies the recipient of that decision.

(c) If the official makes the appropriate modifications and the recipient wishes to pursue its appeal to the Board, the recipient shall amend its application within 30 calendar days of the date it receives the modification.

(Sec. 582(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 298.48 Acceptance of the application.

If the appellant files an application that meets the requirements of § 298.46, the Board Chairperson—

(a) Issues, within 45 days of receiving the application, a notice of the acceptance of the application to the appellant and the authorized Department official who issued the written notice;

(b) Publishes a notice of acceptance of the application in the Federal Register prior to the scheduling of initial proceedings;

(c) Refers the appeal to a Panel;

(d) Arranges for the scheduling of initial proceedings; and

(e) Forwards to the Panel and parties an initial hearing record that includes—

(1) The written notice;

(2) The appellant's application; and

(3) Other relevant documents, such as audit reports.

(Sec. 582(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 298.49 Rejection of the application.

(a) If the Board Chairperson determines that an application does not satisfy the requirements of § 298.46, the Board Chairperson, within 45 days of receiving the application, returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected twice, the Department may take appropriate administrative action to—

(1) Collect the expenditure disallowed in the final audit determination; or

(2) Withhold funds.

(Sec. 582(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 298.50 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about a case before the Board may file with the Board Chairperson an application to intervene.

(b) The application to intervene shall contain—

(1) A statement of the applicant's interest; and

(2) A summary of the relevant information.

(c)(1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether approval of the application to

intervene will aid the Panel in its disposition of the case.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

(f) If an application to intervene is disapproved, the applicant may submit to the Board Chairperson an amended application to intervene.

(Sec. 45(a), (e) of GEPA, 20 U.S.C. 1234(a), (e))

§ 298.51 Practice and procedure.

(a) Practice and procedure before the Board in a proceeding for review of a final audit determination or a cease and desist complaint are governed by the rules in Subpart E of 34 CFR Part 78.

(b) Practice and procedure before the Board in a withholding hearing are governed by the procedures in the Administrative Procedure Act, 5 U.S.C. 554 and 558.

(Sec. 302(a), 20 U.S.C. 387(a); Sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

§ 298.52 The Panel's decision.

(a) The Panel issues a decision, based on the record as a whole, in an appeal from a final audit determination, or from a notice of an intent to withhold funds, within 180 days after receipt of the parties' final submissions, unless the Board Chairperson, for good cause shown, grants the Panel an extension of this deadline.

(b) The Board Chairperson submits the Panel's decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(Sec. 302(a), 20 U.S.C. 387(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 298.53 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision in § 298.52 with the Board Chairperson within 15 calendar days of the date the party receives the Panel's decision.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's initial comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Board Chairperson within 7 days of the date the party receives the initial comments and recommendations.

(c) The Board Chairperson forwards the parties' initial and responsive comments on the Panel's decision to the Secretary.

(Sec. 302(a), 20 U.S.C. 387(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 298.54 The Secretary's decision.

(a) The Panel's decision in § 298.52 becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision unless the Secretary, for good cause shown, modifies or sets aside the Panel's decision.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60 days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) In proceedings involving an appeal from a final audit determination or an intent to withhold funds, to the extent feasible, but consistent with the Secretary's obligation to enforce compliance with Chapter 2, the Secretary defers to a State's interpretation of the statutory requirements under Chapter 2.

(d) The Board Chairperson sends a copy of the Secretary's final decision and statement of reasons, or a notice that the Panel's decision has become the Secretary's final decision, to the Panel and to each party.

(e) The final decision of the Secretary is the final decision of the Department.

(Sec. 302(a), 20 U.S.C. 387(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 298.55 Cease and desist hearing.

(a) *Right to appear at the cease and desist hearing.* The recipient has the right to appear at the cease and desist hearing, which is held before a Panel of the Board on the date specified in the complaint.

(b) *Opportunity to show cause.* At the hearing, the recipient may present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(b) of GEPA, 20 U.S.C. 1234a(b))

§ 298.56 Cease and desist written report and order.

(a) If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel—

(1) Makes a written report stating its findings of fact and

(2) Issues a cease and desist order.

(b) The Board Chairperson sends the report and order to the recipient by certified mail with return receipt requested.

(c) The order becomes final 60 calendar days after the date the order is received by the recipient.

(d) The Secretary does not review the order issued by the Board under this section.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(c), (d) of GEPA, 20 U.S.C. 1234(c), (d))

§ 298.57 Enforcement of a cease and desist order.

(a) If the Panel issues a cease and desist report and order, the recipient shall take immediate steps to comply with the order.

(b) If, after a reasonable period of time, the Secretary determines that the recipient has not complied with the cease and desist order, the Secretary may—

(1) Withhold funds payable to the recipient under Chapter 2 without any further proceedings before the Board;

(2) Certify the facts of the matter to the Attorney General for enforcement through appropriate proceedings.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(e) of GEPA, 1234a(e))

DEPARTMENT OF EDUCATION

34 CFR Part 74

Education Department General
Administrative Regulations (EDGAR)—
Audit Requirements

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the Education Department General Administrative Regulations (EDGAR). These amended regulations implement a revision by the Office of Management and Budget (OMB) of the audit requirements for governmental recipients of Federal grants and subgrants—Attachment P to OMB Circular No. A-102.

EFFECTIVE DATE: These regulations are effective July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Willis Price, Acting Director, Policy Division, Assistance Management and Procurement Services, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5082, ROB-3) Washington, D.C. 20002. Telephone (202) 755-1217.

SUPPLEMENTARY INFORMATION: On October 22, 1979, OMB revised its audit requirements for States, local governments, and Indian tribal governments receiving Federal grants and subgrants. The requirements formerly appeared in Attachment G, paragraph 2(b) of OMB Circular No. A-102. The requirements now are located in a new Attachment P, published on October 22, 1979 in 44 FR 50952.

OMB previously had circulated the proposed revisions of the audit requirements to interest groups representing State, local, and Indian tribal governments; to Federal agencies; and to professional associations. OMB also published the proposed revisions in the Federal Register (44 FR 40624, July 11, 1979).

The most significant changes in the audit requirements are—

1. OMB has clarified its intent that audits be conducted on an organization-wide basis rather than a grant-by-grant basis.
2. As part of the organization-wide audit concept, the new requirements prohibit any Federal program from imposing program specific audit guidelines unless they are approved by OMB.
3. To insure that audits are acceptable to all Federal granting agencies, the new requirements establish a cognizant agency standards for Federal review of audits.

4. The new requirements contain in more detail, the prescribed coverage of audits and questions to be answered.

These regulations implementing Attachment P to Circular A-102 will apply to all programs of the Department except where a regulation for a particular program specifically provides otherwise.

Other Information

These amendments merely repeat Government-wide policies established by OMB after notice and public comment. Therefore, in accordance with 5 U.S.C. 553(b), the Secretary finds that it is unnecessary to take additional public comment before adopting these policies for the Department of Education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

List of Subjects in 34 CFR Part 74

Administrative practice and procedure, Grant programs—education, Grants administration.

Dated: July 14, 1982.

(Catalog of Federal Domestic Assistance No. is not applicable)

T. H. Bell,

Secretary of Education.

The Secretary amends Part 74 of Title 34 of the Code of Federal Regulations, as follows:

PART 74—ADMINISTRATION OF
GRANTS

1. The Table of Contents is amended by revising Subpart H to read as follows:

• • • • •

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems and Non-Federal Audits

Sec.

74.60 Scope of subpart.

74.61 Financial management standards.

74.62 Non-Federal audits—State and local governments and Indian tribal governments.

• • • • •

2. Section 74.60 is revised to read as follows:

§ 74.60 Scope of subpart.

(a) This subpart contains standards for financial management systems and non-Federal audits of recipients.

(b) Awarding parties may not in on recipients additional financial management standards or requirements concerning non-Federal audits. The

awarding parties may, however, provide recipients with suggestions and assistance on these subjects.

(20 U.S.C. 3474)

3. Section 74.61 is amended by revising the title and by adding a new first sentence to paragraph (b)(1) to read as follows:

§ 74.61 Financial management standards.

(b) *Audit*—(1) *General*. This paragraph applies to each recipient that is not a "recipient organization", as defined in § 74.62(b).

4. A new § 74.62 is added to Subpart H to read as follows:

§ 74.62 Non-Federal audits—State and local governments and Indian tribal governments.

(a) *Purpose*. (1) This section establishes audit requirements for State and local governments and Indian tribal governments that receive Federal assistance. It provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulation. The requirements are established to ensure that audits are made on an organization-wide basis, rather than on a grant-by-grant basis.

(2) Except where specifically required by law, no additional requirements for audit will be imposed unless approved by the Office of Management and Budget.

(b) *Definitions*. For the purposes of this section—

"Cognizant agency" means ED if ED has been assigned audit responsibility for a particular recipient organization by the Office of Management and Budget.

"Recipient organization" means a State department, a local government, an Indian tribal government, or a subdivision of those entities, that receives Federal assistance. It does not include State and local institutions of higher education or hospitals.

(c) *Procedures for obtaining Non-Federal audits*. State and local governments and Indian tribal governments shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits. However, the audits must comply with the requirements in this section. Where contracts are awarded for audit services, the contracts must include a reference to this section (34 CFR 74.62).

(d) *Federal audits*. This section does not limit the authority of Federal agencies to make audits of recipient organizations. However, if independent audits arranged for by recipients meet the requirements in this section, all

Federal agencies must rely on them, and any additional audit work must build upon the work already done.

(e) Audits must be made in accordance with the Comptroller General's *Standard for Audit of Governmental Organizations, Programs, Activities and Functions*, The General Accounting Office's *Guidelines for Financial and Compliance Audits of Federally Assisted Programs* and successor publications, any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(f) Audits must include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations. These examinations are to determine whether—

(1) There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities;

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles;

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements, and in accordance with Subpart I of this part; and

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

(g)(1) In order to accomplish the purposes set forth above, a representative number of charges to Federal awards must be tested.

(2) The test must be representative of—

(i) The universe of Federal awards received; and

(ii) All costs categories that materially affect the award.

(3) The test is to determine whether the charges—

(i) Are necessary and reasonable for the proper administration of the program;

(ii) Conform to any limitations or exclusions in the award;

(iii) Were given consistent accounting treatment and applied uniformly to both

federally assisted and other activities of the recipients;

(iv) Were net of applicable credits;

(v) Did not include costs properly chargeable to other federally assisted programs;

(vi) Were properly recorded (i.e., correct amount, date) and supported by source documentation;

(vii) Were approved in advance, if subject to prior approval in accordance with Appendix C to this part;

(viii) Were incurred in accordance with competitive purchasing procedures if covered by Subpart P of this part; and

(ix) Were allocated equitably to benefiting activities, including non-Federal activities.

(h) Audits usually will be made annually, but not less frequently than every two years.

(i) If the auditor becomes aware of irregularities in the recipient organization, the auditor must promptly notify the cognizant agency and recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

(j) The audit report must include—

(1) Financial statements, including footnotes, of the recipient organization;

(2) The auditors' comments on the financial statements which should—

(i) Identify the statements examined, and the period covered;

(ii) Identify the various programs under which the organization received Federal funds, and the amount of the awards received;

(iii) State that the audit was done in accordance with the standards in paragraph (e) of this section; and

(iv) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, the nature of the qualification should be stated;

(5) The auditors' comments on compliance and internal control, including—

(i) Comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses;

(ii) The nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports; and

(iii) An expression of positive assurance with respect to compliance

with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies; and

(5) Comments on corrective action taken or planned by the recipient.

(k) Work papers and reports must be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers must be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

(l) A copy of each recipient's audit report that affects federally assisted programs must be provided to the cognizant agency.

(m) Recipients shall require subrecipients that are State and local governments or Indian tribal governments to adopt the requirements in paragraphs (a) through (k) of this section. The recipient shall ensure that it receives the subrecipients' audit reports.

(n) Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals must have the maximum practicable opportunity to participate in the performance of contracts awarded with Federal funds. Grantees of Federal funds shall take the following affirmative action to further this goal—

(1) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in Pub. L. 95-507 are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged audit firms;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms;

(4) Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small or disadvantaged audit firms as described in paragraph (n)(1) if a contract is too large for an individual small or disadvantaged audit firm; and

(6) Use the services and assistance, as appropriate, of the Small Business

Administration and the Minority Business Development Agency of the Department of Commerce in the solicitation and utilization of small or disadvantaged audit firms.

(20 U.S.C. 2474)

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