District and School Set-Asides

Requests for waivers to allow exclusion of Title I, Part A ARRA funds in "set-aside" calculations

The South Dakota Department of Education (State) is planning to submit a request to the Secretary of the U.S. Department of Education (US ED) to waive some of the requirements of section 1116 of the Elementary and Secondary Education Act (ESEA). Specifically, the waiver would include:

- An LEA's obligation to spend an amount equal to at least 20 percent of its FY 2009 Title I, Part A, Subpart 2 allocation on transportation for public school choice and on SES (20 percent obligation) (ESEA section 1116(b)(10); 34 C.F.R. § 200.48).
- The responsibility of a school in improvement to spend 10 percent of its Title I, Part A funds on professional development (ESEA section 1116(b)(3)(A)(iii); 34 C.F.R. § 200.41(c)(5)).
- The responsibility of an LEA in improvement to spend 10 percent of its FY 2009 Title I, Part A, Subpart 2 allocation on professional development (ESEA section 1116(c)(7)(A)(iii); 34 C.F.R. § 200.52(a)(3)(iii)).

Prior to submitting this waiver request the State is required to provide all interested Local Education Agencies (LEAs) in the State with notice and a reasonable opportunity to comment on the request. The State will submit all comments it receives related to this request from the LEAs to US ED along with its waiver request. The State will accept comments related to the waiver request until August 2, 2009.

This waiver request is related to three "set-asides" or obligations in Title I, Part A related to district and school improvement. These requirements are:

- The requirement to calculate an LEA's 20 percent obligation for public school choice-related transportation and SES based on the LEA's total FY 2009 Title I, Part A allocation (regular allocation *and* ARRA).
- The requirement to calculate the 10 percent set-aside for professional development for an LEA in improvement based on the LEAs total FY 2009 Title I, Part A allocation (regular allocation *and* ARRA).
- The requirement to calculate the 10 percent set-aside for professional development for a school in improvement based on the total amount of FY 2009 Title I, Part A funds the school receives under section 1113 (from the LEAs regular allocation *and* ARRA).

Absent a waiver, an LEAs Title I, Part A ARRA funds would be included in the LEAs Title I, Part A, Subpart 2 allocation in determining the "set aside" amounts for the above requirements. A waiver related to either the 20 percent obligation for public school choice-related transportation and SES or the 10 percent set-aside for professional development for an LEA in improvement would permit an LEA, if it so chooses, to exclude some or all of its Title I, Part A ARRA funds in calculating these "set-aside" amounts. A waiver related to the 10 percent set-aside for professional development for a school in improvement would allow a school to calculate this set-aside in a way that takes into account some or all of the LEAs Title I, Part A ARRA funds.

District Level Waivers
In requesting a waiver related to either the 20 percent obligation for choice-related transportation and SES or the 10 percent professional development obligation for an LEA in improvement, an SEA will include the following assurances with respect to the specific "set-aside" requirement for which the waiver is requested:

- That the SEA will only implement the waiver for an LEA that provides assurances to the SEA that:
  - The LEA will comply with its statutory and regulatory obligations for the set-aside with respect to its regular Title I, Part A allocation;
  - The LEA will use the funds freed up by the waiver to address needs identified based on data, such as Statewide or formative assessment results;
  - The LEA will comply with all of its other Title I, Part A statutory and regulatory obligations, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that "use effective methods and instructional strategies that are based on scientifically based research"; and
  - The LEA will submit an application for Title I, Part A funds (referred to herein as "LEA application") or, if necessary, an amendment to its existing LEA application that describes the data on which it relied to identify needs that will be addressed using the funds freed up by the waiver and the evidence that supports the strategies it intends to use to address those needs.
- That the SEA will not approve an LEAs application or amendment to an LEAs application unless or until it determines, based on the LEAs description, that the LEA has satisfied its obligation to identify needs based on data and address those needs using evidence-based strategies.
- That the SEA will not approve an LEA to implement the waiver unless or until the LEA has an approved application (or amended application) that includes the required description of the data on which the LEA relied to identify needs and the evidence that supports the strategies to address those needs.
- That, if necessary to carry out the assurances above, the SEA will require an LEA seeking to implement the waiver to amend its application in accordance with the SEAs usual process for changing an LEAs application.

Please note that US ED does not expect the SEA, by making these assurances, to alter its usual process for approving LEA applications. Rather, the SEA is providing an assurance that it will meet its statutory and regulatory obligations for approving LEA applications for Title I, Part A funds.

School Level Waivers
In requesting a waiver related to the 10 percent professional development obligation for a school in improvement, an SEA will provide an assurance that it will only implement the waiver for an LEA that provides assurances to the SEA that:

  - The LEA will ensure that its schools comply with their statutory and regulatory obligations for the set-aside with respect to the funds that are not "factored out" in accordance with C-9;
  - The LEA will ensure that its schools use the funds freed up by the waiver to address needs identified based on data, such as Statewide or formative assessment results or;
  - The LEA will comply with all of its other Title I, Part A statutory and regulatory obligations, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that "use effective methods and instructional strategies that are based on scientifically based research"; and
  - The LEA will ensure that its schools will implement the waiver in accordance with C-9.

An LEA will include in its request to implement a waiver related to the calculation of "set-asides" all of the assurances that are described as LEA assurances in the SEAs request to US ED. In addition, in its request to implement a waiver related to either the 20 percent obligation or the LEAs professional development obligation, an LEA also must provide the amount of its Title I, Part A ARRA allocation (*i.e.*, the 20 percent obligation or the professional development obligation) that it seeks to exclude from the calculation for which the LEA is implementing the waiver. Similarly, in its request to implement a waiver related to the obligation of a school in improvement to reserve a portion of the Title I, Part A funds it receives for professional development, an LEA must provide the amount of its Title I, Part A ARRA allocation that it seeks to exclude from the calculation noted in the question below. With respect to the amount of its Title I, Part A ARRA allocation that an LEA seeks to exclude from the calculation for the "set-aside" for which it seeks to implement the waiver, note that an LEA is not obligated to exclude the same amount of its Title I, Part A ARRA allocation from each calculation. For example, the LEA may request to exclude 100 percent of its Title I, Part A ARRA funds from the calculation for its professional development obligation but only 50 percent of its Title I, Part A ARRA funds from the calculation for its 20 percent obligation for choice-related transportation and SES.

An LEA does not need to include in its request to implement the waiver a description of the data on which it relied to identify needs that will be addressed using the funds freed up by the waiver and the evidence that supports the strategies it intends to use to address those needs. Instead, that description must be provided in the LEAs application for Title I, Part A funds.

So long as a district complies with the requirements of section 1113 of the ESEA with respect to serving eligible school attendance areas with its FY 2009 Title I, Part A allocation (consisting of Title I funds received through the ARRA and the regular FY 2009 appropriation), it has discretion with respect to how it will allocate its Title I, Part A funds to its Title I schools. Accordingly, in implementing section 1113 of the ESEA, it is possible that some schools will receive a disproportionate amount of their Title I, Part A funds from the ARRA or from the regular FY 2009 appropriation compared to the proportion of FY 2009 Title I funds the schools' LEA receives through the ARRA and the regular FY 2009 appropriation. Given this situation, to ensure that all schools in improvement are treated equally with respect to the professional development requirement, this waiver does not eliminate the professional development requirement of section 1116(b)(3)(A)(iii) for schools in improvement. It does, however, factor out the effect that the portion of an LEAs FY 2009 Title I, Part A allocation received through the ARRA would have on establishing the amount such schools must spend on professional development from their Title I, Part A funds received under section 1113. Therefore, an LEA receiving the benefit of this waiver must ensure that each of its schools in improvement spends on professional development an amount at least equal to:

(a) * (b ÷ c) * (.10)

Where:

a = the total amount of FY 2009 Title I, Part A funds received by the school under section 1113 of the ESEA;
b = the portion of the LEAs FY 2009 Title I, Part A allocation provided through the regular FY 2009 appropriation; and
c = the LEAs total FY 2009 Title I, Part A allocation, including Title I, Part A ARRA funds.

For example, consider an LEA that has a total FY 2009 Title I, Part A allocation of $1,000,000, of which $600,000 is provided through the regular FY 2009 appropriation and $400,000 is provided through the Title I, Part A ARRA appropriation, and has a school in improvement receiving, under section 1113 of the ESEA, Title I, Part A funds in the amount of $200,000. To implement this waiver, the LEA must ensure that this school spends at least $12,000 on professional development out of the $200,000 it receives under section 1113 of the ESEA, as calculated below:

($200,000) * ($600,000 / $1,000,000) * (.10) = $12,000

If the state receives a waiver related to one or more of the "set-aside" requirements described in C-1, it will submit to US ED, by September 30, 2010, a report that includes the following information:

- <u>20 percent obligation for public school choice-related transportation and SES</u>: For a waiver that allows the exclusion of some or all of the LEAs Title I, Part A ARRA funds in the calculation of the 20 percent obligation for choice-related transportation and SES, the SEA must report to US ED the name and NCES District Identification Number for each LEA implementing the waiver. The SEA will indicate in its report to US ED the name and NCES District Identification Number for each LEA that requested but was denied permission to implement the waiver. Note that, independent of this reporting requirement, US ED requires an SEA to submit information regarding LEAs' implementation of the 20 percent obligation for choice-related transportation and SES through ED*Facts*. In addition, each SEA is also required to post the 20 percent obligation for each LEA on its website (34 C.F.R. § 200.47(a)(1)(ii)(B)(*1*). That information must reflect an LEAs implementation of this waiver.
- <u>10 percent set-aside for professional development for an LEA in improvement</u>: For a waiver that allows the exclusion of some or all of the LEAs Title I, Part A ARRA funds in the calculation of the 10 percent set-aside for professional development for an LEA in improvement, the SEA must report to US ED the name and NCES District Identification Number for each LEA implementing the waiver. The SEA must also indicate in its report to the US ED the name and NCES District Identification Number for each LEA that requested but was denied permission to implement the waiver.
- <u>10 percent set-aside for professional development for a school in improvement</u>: For a waiver that allows a school to "factor out" some or all of its LEAs Title I, Part A ARRA funds in the calculation of the 10 percent set-aside for professional development for a school in improvement, the SEA must report to US ED the name and NCES District Identification Number for each LEA implementing the waiver with respect to its schools. The SEA must also indicate in its report to the US ED the name and NCES District Identification Number for each LEA that requested but was denied permission to implement the waiver.

A waiver of one or more of the "set-aside" requirements will be granted for FY 2009 (the 2009–2010 school year). Each set-aside obligation is determined based on an LEAs Title I, Part A, Subpart 2 allocation for a particular fiscal year. Because Title I, Part A ARRA funds are a part of an LEAs FY 2009 allocation only, the LEA needs the benefit of a waiver of any of the "set-aside" requirements only for FY 2009.

If an LEA receives a waiver related to one or more of the "set-aside" requirements, it must include the Title I, Part A funds that are no longer subject to the set-aside in the calculation of the amount available for providing equitable services for eligible private school children.

The information in this document is found in questions C-6 through C-13 in the Title I Waiver guidance online at: http://doe.sd.gov/stimulus/title1waivers

To provide comments on the set aside waivers, click on the survey link provided on the web site (Questions 4, 5, & 6).