HIGHLY QUALIFIED TEACHERS

IMPROVING TEACHER QUALITY STATE GRANTS

ESEA TITLE II, PART A

NON-REGULATORY GUIDANCE

Revised

August 3, 2005

Academic Improvement and Teacher Quality Programs
Office of Elementary and Secondary Education
U.S. Department of Education

UNITED STATES DEPARTMENT OF EDUCATION

August 2005

Dear Colleague:

I am pleased to share with you a revised and expanded version of the *Highly Qualified Teachers and Improving Teacher Quality State Grants Non-Regulatory Guidance*. While this revised guidance does not depart significantly from the previous version, it introduces new questions and expands others. Many of these changes, including new policies pertaining to teachers in rural districts, science teachers, and teachers of multiple subjects, were made in response to feedback from Teacher Assistance Corps (TAC) and monitoring visits. The Guidance also includes new questions on highly qualified teacher flexibility policies, revisions to and expansions of answers to several questions, revisions to the deadline by which paraprofessionals must become highly qualified, and new information on highly qualified special education teachers that results from the reauthorization of the *Individuals with Disabilities Education Act*, or IDEA.

States are making considerable progress toward reaching the *No Child Left Behind Act's* goal of ensuring that all teachers of core academic subjects are highly qualified by the end of the 2005-06 school year. Funds from the *Improving Teacher Quality State Grants* program are being used to prepare, train, and recruit high-quality teachers and principals capable of ensuring that all children achieve to high standards. According to the Department's *Annual Report on Teacher Quality,* States are raising standards for teachers while eliminating unnecessary barriers to teacher recruitment.

- As of October 2003, 41 States and territories had developed and linked teacher certification requirements to student content standards.
- As of October 2003, all but 6 States and territories had approved an alternate route to certification.
- Thirty-nine States and territories require prospective teachers to hold a subject-area bachelor's degree for initial certification.
- Forty-seven States and territories require statewide assessments for beginning teachers and 34 require teaching candidates to pass a test in at least one academic content area.

The Department of Education is currently monitoring each State to assess progress in meeting the highly qualified teacher goal, and to assure compliance with the requirements of *ESEA Title II, Part A*. Ten state visits were conducted in 2004, and we expect to visit an additional 35-40 States in 2005 and the remainder in early 2006. In addition to reviewing for compliance, we are using these visits to collect information on innovative State and local initiatives, including promising practices in the areas of certification and licensure, teacher preparation, recruitment, retention, induction and mentoring, professional development, technology, paraprofessionals, and leadership. Descriptions of many of these promising practices are available at the website www.teacherquality.us/Public/PracticesHome.asp, which we will continue to update.

Thanks to your tireless efforts, we are increasing educational excellence. The goal of leaving no child behind will soon become a reality. Please do not hesitate to contact the *Title II* program staff in the Office of Elementary and Secondary Education with any further questions or concerns. We would be pleased to assist in any way possible.

Sincerely,

Margaret Spellings
Secretary of Education

PURPOSE OF THIS GUIDANCE

This Non-Regulatory Guidance explains how State educational agencies, local educational agencies, and State agencies for higher education can effectively use *Title II, Part A* funds to ensure that all teachers are highly qualified and effective, a critical component of the *No Child Left Behind Act* and the *Individuals with Disabilities Education Act.*

The Guidance in this document supersedes all prior guidance issued by the Department for highly qualified teachers and for the *Title II, Part A* program. The revised Guidance addresses new issues raised by State and local officials in light of their experiences in administering the programs authorized in *No Child Left Behind*, provides additional clarification and rationale in areas for which the Department received inquiries from the field, and provides new and expanded examples of promising practices. This Guidance does not impose any requirements beyond those that the law specifies and, where possible, it encourages varying approaches and focuses on what can be done rather than on what cannot be done.

Any requirements referred to in this Guidance are taken directly from the statute, with citations provided throughout. Except for explicit statutory requirements, State and local recipients are free to implement *Title II, Part A* activities based on their own reasonable interpretations of the law.

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A. HIGHLY QUALIFIED TEACHERS

The purpose of *ESEA Title II, Part A* is to help States and school districts ensure that all students have effective teachers; that is, teachers with the subject-matter knowledge and teaching skills necessary to help all children achieve to high academic standards, regardless of individual learning styles or needs. In this regard, the program provides substantial funding to help States and districts recruit, train, reward, and retain effective teachers. *Title II, Part A* and *Title I, Part A* also place particular emphasis on the need for States and districts to ensure that teachers of core academic subjects meet certain minimum requirements they need to become effective educators. The requirements to be considered "highly qualified" are that teachers hold at least a bachelor's degree, be fully licensed by the State, and demonstrate content knowledge in each subject they teach.

All State educational agencies (SEAs) that receive *Title I, Part A* funds are required to develop and implement a plan to have all teachers of core academic subjects highly qualified no later than the end of the 2005-06 school year. Each local educational agency (LEA) within these States must ensure that all teachers of core academic subjects hired after the first day of the 2002-03 school year and teaching in a program supported with *Title I, Part A* funds already are highly qualified. Teachers who are paid with *Title II, Part A* funds for the purposes of class size reduction must also be highly qualified after the first day of the 2002-03 school year. The LEA must also have a plan describing how it will meet the annual measurable objectives established by the SEA for ensuring that *all* teachers of core academic subjects in the LEA are highly qualified by the end of the 2005-06 school year [Section 1119(a)(1) and (3)].

In March 2004, the Secretary announced flexibility in implementing these requirements for LEAs that are eligible for the Small Rural School Achievement (SRSA) program. This flexibility recognizes that teachers in small, rural school districts are often assigned to teach multiple subjects and, thus, face unique challenges in meeting the highly qualified provisions. They may need additional time to meet the requirements in all subjects they teach. So long as existing teachers in these districts are highly qualified in at least one core academic subject, they have until the end of the 2006-2007 school year to become highly qualified in the additional subjects they teach; newly hired teachers must be highly qualified in at least one subject that they will teach, but will have three years from their date of hire to demonstrate subject-matter competency in each of their other assigned subjects. In addition, eligible districts must provide high-quality professional development and a program of intensive support or mentoring for all these teachers as they develop additional subject-matter competencies. Please see question A-29 for more information about this flexibility.

The 2004 *Individuals with Disabilities Education Act* (IDEA) amendments contain another exception for special education teachers who are new to the profession and who teach multiple core academic subjects exclusively to students with disabilities. These teachers must be highly qualified in mathematics, language arts, or science at the time of hire, but they have two additional years after the date of hire to become highly qualified in all other core academic subjects they teach. Please see question A-32 for more information about this provision.

General Information

A-1. What is the definition of a highly qualified teacher?

The requirement that teachers be highly qualified applies to all public elementary or secondary school teachers employed by a local educational agency who teach a core academic subject (see question A-2, below). "Highly qualified" means that the teacher:

1. Has obtained full State certification as a teacher or passed the State teacher licensing examination and holds a license to teach in the State, and does not have certification or licensure requirements waived on an emergency, temporary, or provisional basis;

2. Holds a minimum of a bachelor's degree; and

3. Has demonstrated subject-matter competency in each of the academic subjects in which the teacher teaches, in a manner determined by the State and in compliance with Section 9101(23) of ESEA.

The statutory definition includes additional elements that apply somewhat differently to teachers new and not new to the profession, and to elementary, middle, and secondary school teachers. The complete definition of a "highly qualified" teacher is in Section 9101(23) of the ESEA (Appendix A) and in Section 602(10) of the IDEA (Appendix D).

A-2. What is meant by "core academic subjects"?

The term "core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography [Section 9101(11)]. While the statute includes the arts in the core academic subjects, it does not specify which of the arts are core academic subjects; therefore, States must make this determination.

A-3. How does the State determine if an elementary, middle, or secondary school teacher who is not new to the profession is highly qualified?

The SEA is responsible for developing and approving methods for ensuring that teachers have, in addition to a bachelor's degree and full State certification, subject-matter competency and teaching skills. Teachers can demonstrate their competency and skills by (a) passing a rigorous State academic subject-matter test, (b) in the case of middle or secondary school teachers, completing an academic major, graduate degree, coursework equivalent to an academic major, or advanced certification or credentialing, or (c) using the high, objective, uniform State standard of evaluation (HOUSSE) (see questions A-9 through A-12) [Section 9101(23)]. [See questions A-4 and A-5 for a discussion of the State academic subject-matter test.]

A-4. How does the State determine if *elementary school teachers* who are new to the profession have the subject-matter knowledge and teaching skills that are needed of highly qualified teachers?

To meet the requirements of the law, teachers at the elementary level who are new to the profession must (1) hold at least a bachelor's degree, (2) be licensed by the State, and (3) demonstrate, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary curriculum [Section 9101(23)(B)(i)]. While the Department is always willing to respond to inquiries from States, it is the responsibility of the SEA to identify and approve specific tests. We recommend that each SEA use the guidelines below to evaluate any subject-matter tests it may consider using for this purpose.

The test may consist of a State-required certification or licensing test (or tests) in reading, writing, math, and other areas of the basic elementary school curriculum. The content of the test should be rigorous and objective and serve as a high, uniform standard that each candidate is expected to meet or exceed.

The purpose of the test is to establish the candidate's knowledge of content and teaching skills in reading, writing, math, and other areas of the basic elementary curriculum. Keeping an explanation on file of how the tests meet the criteria required by the law would be one way for the State to demonstrate it is in compliance with the Section 9101(23) requirements.

A-5. How does the State determine if *middle and high school teachers* who are new to the profession have a high level of competence in each of the subjects they will teach?

To meet the requirements of the law, teachers at the middle and high school levels who are new to the profession must (1) hold at least a bachelor's degree, (2) be licensed by the State, and (3) demonstrate their competence, in each of the core academic subjects the teacher teaches, by:

- completing an academic major, a graduate degree, coursework equivalent to an academic major, or advanced certification or credentialing; or
- passing a rigorous State academic subject test [Section 9101(23)(B)(ii)].

While it is the responsibility of the SEA to identify and approve such tests, the Department recommends that each SEA use the guidelines below to evaluate any subject-matter tests it may consider using for this purpose.

The academic subject test may consist of a State-required certification or licensing test (or tests) in each of the academic subjects in which a teacher teaches[1]. The content of the

[1] Also see question A-15. The Department recognizes that the ESEA does not define "middle school" and that grades 6-8 may be located in a K-8 setting, a non-departmentalized middle school, or a departmentalized middle or junior high school. If the State or LEA chooses to treat these grades, or some of the core academic subjects taught in those grades, as part of "elementary school," it may administer

test should be rigorous and objective, focus on a specific academic content area, and have a high, objective, uniform standard that the candidate is expected to meet or exceed. These standards must be applied to each candidate in the same way.

The purpose of the test is to establish the candidate's knowledge in a given subject-matter. In addition, the test might be used to target the areas where additional coursework or staff development may be needed to help the teacher succeed at meeting the standard.

Keeping an explanation on file as to how the tests meet the criteria required by the law, would be one way for a State to demonstrate it is compliance with the Section 9101 requirements.

A-6. How are the terms "new to the profession" and "not new to the profession" defined?

States have the authority to define which teachers are new and not new to the profession; however, these definitions must be reasonable. The Department strongly believes that a teacher with less than one year of teaching experience is "new" to the profession and, therefore, must demonstrate subject-matter competency as a new teacher.

A-7. What is meant by "full State certification"?

Full State certification, as determined under State law and policy, means that the teacher has fully met those State requirements that apply to the years of experience the teacher possesses. For example, these requirements may vary for first-year teachers and for teachers not new to the profession. In addition, "full State certification" means that the teacher must not have had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

States are free to redefine, in accordance with State law, their certification requirements (for example, they may streamline their requirements if they determine that they are too onerous) or create non-traditional approaches to certification. For example, a State may determine that an individual is fully certified if he or she has passed a rigorous assessment, such as those currently being developed by the American Board for Certification of Teacher Excellence, of his or her subject-matter mastery and professional teaching knowledge. Such non-traditional approaches to full State certification are different from alternate route to certification programs (see A-8 below) because, in the former, the candidate is fully certified before he or she starts teaching.

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rigorous teacher assessments (that may include a broad-field assessment for elementary-level subjects) appropriate to the content standards of the subject(s) being taught.

A-8. When can a teacher in an alternate route to certification/licensure program be considered "highly qualified"?

A teacher in an alternate route to certification program may be considered highly qualified if the teacher holds at least a bachelor's degree, has already demonstrated subject-matter competency in the core academic subject(s) the teacher will be teaching, and is participating in an alternate route to certification program in which the teacher: (1) receives, before and while teaching, high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction; (2) participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or in a teacher mentoring program; (3) assumes functions as a teacher for a period not to exceed three years; and (4) demonstrates satisfactory progress toward full certification as prescribed by the State.

The State must ensure, through its certification and licensure process, that these provisions are met [Section 200.56(a)(2) of the *Title I* regulations, December 2, 2002]. If the teacher does not complete the alternative certification program within the three-year period, the teacher is no longer considered to be highly qualified.

High Objective Uniform State Standard of Evaluation (HOUSSE)

A-9. What is meant by High Objective Uniform State Standard of Evaluation (HOUSSE) procedures?

States have the option of developing a method by which teachers not new to the profession can demonstrate competency in each subject they teach on the basis of a "high objective uniform State standard of evaluation" (HOUSSE). This standard must be one that, among other requirements, "provides objective coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches" [Section 9101(23)(C)(ii)(III)].

The States can establish a process to evaluate teacher knowledge and ability based on a high, objective uniform State standard of evaluation that meets each of the following criteria [Section 9101(23)(C)(ii)]:

- Be set by the State for both grade-appropriate academic subject-matter knowledge and teaching skills;
- Be aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;
- Provide objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches;
- Be applied uniformly to all teachers in the same academic subject and teaching in the same grade level throughout the State;
- Take into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject; and

- Be made available to the public upon request.

The statute also permits the States, when developing their HOUSSE procedures, to involve multiple, objective measures of teacher competency. Each evaluation should have a high, objective, uniform standard that the candidate is expected to meet or exceed. These standards for evaluation must be applied to each candidate in the same way.

Where States choose to adopt this alternative means for assessing whether teachers not new to the profession are highly qualified, keeping on file an explanation for how the demonstration of competency meets the criteria required by the law, would be one way for a State to demonstrate that it has established procedures that conform to the Section 9101(23) requirements.

A-10. What factors should a State consider when developing its HOUSSE procedures?

In considering each of the statutory criteria when developing their HOUSSE procedures, States should consider the following factors:

- Do the HOUSSE procedures provide an "objective" way of determining whether teachers have adequate subject-matter knowledge in each core academic subject they teach?
- Is there a strong and compelling rationale for each part of the HOUSSE procedures?
- Do the procedures take into account, but not primarily rely on, previous teaching experience?
- Does the plan provide solid evidence that teachers have mastered the subject-matter content of each of the core academic subjects they are teaching? (Note: experience and association with content-focused groups or organizations do not necessarily translate into an objective measure of content knowledge.)
- Has the State consulted with core content specialists, teachers, principals, and school administrators?
- Does the State plan to widely distribute its HOUSSE procedures, and are they presented in a format understandable to all teachers?

A-11. May States develop HOUSSE procedures that allow teachers to demonstrate competence in several subjects simultaneously?

Yes, so long as the HOUSSE procedures developed by the States include sufficient information in each of the subject areas to provide a reasonable determination that a teacher has adequate subject-matter competency in those subjects. In practice, a multi-subject HOUSSE approach may work best when applied to related fields. For instance, a State might want to consider developing a HOUSSE procedure that applies to the teaching of geography and history. In this case, it is possible that many of the teacher's courses, previous teaching experiences, and professional development activities may provide objective evidence of competency in each of these subjects.

A-12. May States offer HOUSSE procedures as a way for experienced teachers to demonstrate subject-matter competency in the subjects they teach after the 2005-06 school year?

Yes. Even after the end of the 2005-06 school year, States may continue to offer HOUSSE as a way of determining that individual teachers who are not new to the profession have the subject-matter competence they need to be highly qualified in each subject they teach. For example, a State's HOUSSE can still be used after 2006 to demonstrate that the following teachers, among others, have the subject-matter knowledge they need to be highly qualified: teachers of multiple subjects in rural LEAs eligible for expanded flexibility; teachers rehired by LEAs after periods of work in other professions or retirement; teachers recruited from other Nations; teachers who are highly qualified in one subject area who are asked to teach an additional subject for which they have not yet demonstrated subject-area competency; or teachers who are hired after moving from other States.

Middle School Teachers

A-13. What are the requirements governing highly qualified middle school teachers?

New to the Profession: A middle school teacher who is new to the profession must have (1) passed "a rigorous State subject test in each of the academic subjects in which the teacher teaches" [Section 9101(23)(B)(ii)(I)], or (2) have successfully completed, in each of the academic subjects the teacher teaches "an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing" [Section 9101(23)(B)(ii)(II)]. [See question A-5.]

Not new to the Profession: Middle school teachers who are not new to the profession may meet the subject-matter competency requirement by completing one of the two options listed above for new middle school teachers [Section 9101(23)(C)(i)] or through the HOUSSE procedure established by the SEA. [See question A-3.]

A-14. How does a State determine whether teachers of core academic subjects in grades 6, 7, and 8 must meet the subject-area competency requirements for elementary school or for middle school teachers?

The intent of the law is to ensure that each teacher of a core academic subject has sufficient subject-matter knowledge and skills to instruct effectively in his or her assigned subjects, regardless of whether the school is configured as an elementary or a middle school. For instance, 8th-grade algebra teachers must have the same requisite skills and knowledge whether they teach in elementary schools or middle schools.

To determine whether a teacher of a core academic subject in grades 6 through 8 must meet the subject-matter competency requirements for elementary school teachers or those for middle school teachers, States should examine the degree of rigor and technicality of the subject-matter that the teacher will need to know in relation to the State's content standards and academic achievement standards for the subjects that will be taught.

A-15. May a teacher with middle school certification be considered highly qualified?

Yes. In a State that issues a certification specifically for middle school teachers, middle school teachers holding such a certification would be considered highly qualified if they hold a bachelor's degree and either pass a rigorous a State-approved test of their knowledge of each of the core academic subjects they will teach, or complete an academic major or coursework equivalent to an academic major, attain an advanced degree or certification in each subject they teach, or demonstrate competency in each subject they teach through their State's HOUSSE procedures.

A-16. May middle school teachers take tests that are specifically developed for middle school academic content areas, or do they have to pass the same tests as high school teachers?

A State may approve rigorous content-area assessments that are developed specifically for middle school teachers and aligned with middle school content and academic standards.

A-17. May a middle school teacher who has passed a State "generalist" exam in math, science, English, and social studies be considered to have demonstrated subject competency - on the basis of passing the test - to teach middle school courses and, therefore, be a highly qualified teacher?

If the content of a general or broad-field exam does not rigorously measure each of the subjects being taught, at the level of difficulty necessary for effective instruction in the subject being taught, the exam cannot be considered valid for demonstrating subject-matter competency. The law states that a middle school (and high school) teacher must demonstrate a high level of competence "in each of the academic subjects in which the teacher teaches" [Section 9101(23)(B)(ii) and (C)(ii)]. If a teacher does not meet this requirement on the basis of successful completion of an academic major or equivalent, or through the attainment of an advanced degree or credential, the teacher either must, for each subject that he or she would teach, pass a rigorous State academic subject test or demonstrate competence through HOUSSE procedures. (See A-19 for more information about taking a single exam for subject-area competency.)

Demonstrating Subject-Area Competency

A-18. Are teachers who are highly qualified to teach one or more middle or secondary school science courses also qualified to teach other science courses?

No Child Left Behind does not identify specific sciences, e.g., biology, chemistry or physics, as core academic subjects; it identifies only "science." In determining the extent of subject-matter competency sufficient to identify teachers as highly qualified to teach a particular science course, States may consider the rigor of their current teacher certification standards and student achievement standards. To the extent that a State requires subject-specific certification or endorsements in a particular field of science, the

State must require teachers to demonstrate competency in that subject in order that the teachers be considered highly qualified.

However, some States certify general science teachers or certify them in "broad-field" categories, such as life sciences and physical sciences. Instead of having teachers demonstrate subject-matter competency in each particular science subject they teach, these States may instead: (1) require new science teachers to demonstrate content knowledge through a content test or academic major or equivalent that corresponds to their broad certification requirements; and (2) offer experienced teachers the opportunity also to demonstrate competency through HOUSSE procedures that evaluate a teacher's content knowledge against the State's broad-field certification requirements.

A-19. Can a teacher demonstrate subject-area competency in multiple subjects, e.g., civics and government, or chemistry and physics, through a single test?

Yes, a State may offer a single test that covers more than one core content area. To be able to determine whether a teacher who passes such a test has demonstrated subject-matter competency in each subject covered by the test, the State would have to determine (as it would for a single-subject test) that the test questions adequately cover the content area of each subject and that the teacher has successfully answered an adequate subset of those questions.

A-20. Are middle school or secondary teachers who have received a composite social studies degree considered highly qualified to teach all four of the social studies disciplines listed in the statute (economics, civics and government, history, and geography)?

No Child Left Behind does not identify social studies as a core academic subject. Instead, it identifies specific core academic areas: history, geography, economics, and civics and government. A composite social studies license might not provide adequate subject-matter preparation for each of these four subjects. For instance, a teacher might take 42 hours of "social studies" coursework in the course of receiving a composite social studies degree but never take any economics. That teacher could not be considered highly qualified in economics, but might be highly qualified in one or more of the other three subject areas if the coursework in each area was considered equivalent to a major.

Because a composite social studies degree, by itself, is unlikely to contain enough course content to satisfy HQT requirements in all four core academic areas, the State must determine in which of the four areas, if any, a teacher is qualified. After 2005-06, teachers who have composite social studies degrees may only be assigned to teach classes in the specific areas in which they have been deemed highly qualified.

A-21. Must accommodations be provided to teachers with disabilities when they are required to take a test in order to meet the highly qualified teacher requirements?

Both the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) generally require that appropriate testing accommodations be provided to qualified individuals with disabilities in such instances. Under the ADA and Section 504, SEAs and LEAs generally are required to provide appropriate testing accommodations where participation in testing is a condition of employment. Under the ADA and Section 504, when a State or LEA contracts or arranges with another entity, such as a testing company, to wholly administer the examinations, the State or LEA remains responsible for ensuring that appropriate accommodations are provided to qualified individuals with disabilities participating in testing as a condition of employment.

Which Teachers Must Be Highly Qualified?

A-22. Do teachers need to meet the highly qualified requirements if they are not teaching a core academic subject?

No, only teachers who teach core academic courses are required to meet the definition of a highly qualified teacher. (See A-2 for the definition of core academic subjects.)

A-23. How may a school district that brings in visiting international teachers comply with the requirement that all teachers be highly qualified?

NCLB requires each teacher of a core academic subject to be highly qualified, as defined and discussed earlier in this section of the Guidance. These requirements are essential to ensuring that all teachers of core academic subjects, whether they are recruited and hired from within the United States or from other countries, have the content knowledge and teaching skills needed to enable all students to succeed. The following sections explain how, consistent with the statutory requirements governing highly qualified teachers, school districts may continue to hire and employ visiting international teachers.

Bachelor's Degree

A foreign teacher will have met this requirement if he or she has received a degree from a foreign college or university that is at least equivalent to a bachelor's degree offered by an American institution of higher education (IHE). Agencies responsible for recruiting international teachers should ensure that they provide the LEAs who will hire these teachers documentation that each international teacher has received the necessary degree from a foreign (or domestic) IHE.

Full State Certification or Licensure

Section 9101(23) states that teachers who have had certification or licensure requirements waived on an emergency, temporary, or provisional basis would not be considered to be highly qualified. However, in examining the credentials of prospective visiting international teachers, States may find that their existing certification or licensure requirements (including those that govern testing) are ones that these prospective teachers could readily meet. Because each State continues to have full authority to define and enforce its own requirements that teachers must meet in order to receive full State certification or licensure, States that employ visiting international teachers may consider establishing a separate category of temporary certification that would differ from emergency or provisional certification in that the State would not be waiving any training or experiential requirements.

In designing this certification category, a State may want to establish interim requirements for international teachers that are tailored to (1) addressing the needs of LEAs within the State, and (2) its responsibility to ensure that visiting teachers have the knowledge and skills to warrant State certification.

This approach would be particularly useful for States and districts that employ, for no more than two years, international teachers who come to this country on a "J-1" visa.

Competency in Subject Knowledge and Teaching Skills

The definition of a "highly qualified" teacher is very specific about the methods available for having a teacher demonstrate subject knowledge and teaching skills. Experienced international teachers (i.e., teachers who are not new to the field) can demonstrate the required subject competency and teaching skills either by passing subject-matter competency tests or by demonstrating competence on a "high, objective, uniform, State standard of evaluation." These options are discussed below.

Subject-Matter Competency Tests:

For middle and high school teachers, Section 9101(23)(B)(ii)(I) and (II) permits a State's new or existing middle and high school teachers to demonstrate the required subject-matter competency and teaching skills by …"successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing." Therefore, international teachers who have successfully completed at least an academic major in the subjects that they would teach in U.S. schools have demonstrated the requisite competency in subject competency and teaching skills.

Prospective international teachers who did not major in the subject that they would be hired to teach in U.S. schools would need to take and pass the State test in the subject(s) they would teach. However, States have flexibility to determine that, for purposes of the international teachers, the subject tests they have passed in their own countries constitute a requisite "State test" for purposes of ESEA Section 9101(23).

For elementary school teachers, Section 9101(23)(B)(i)(II) permits a State's new or experienced elementary school teachers to demonstrate the required subject competency and teaching skills by "passing a rigorous State test … in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum)." Elementary school teachers may not demonstrate subject-matter competency solely through a subject-area major; otherwise, the options available through HOUSSE (see below) for having middle and high school teachers demonstrate subject competency and teaching skills also apply to elementary school teachers.

High Objective Uniform State Standard of Evaluation:
ESEA Section 9101(23)(C)(ii) permits any experienced teacher, without regard to whether the teacher has taught in U.S. schools or schools in other countries, to demonstrate subject competency and teaching skills through a State-established HOUSSE procedure. States may be able to find reasonable ways to apply their HOUSSE procedures to international teachers.

Whatever method a State and LEA may adopt to demonstrate that international teachers have the requisite subject competency and teaching skills before they are employed in U.S. schools, any institutions responsible for recruiting these teachers should be able to provide documentation that international teachers meet the ESEA requirements that govern highly qualified teachers.

A-24. Are early childhood or pre-kindergarten teachers subject to the highly qualified teacher requirements?

The requirements that teachers be highly qualified do not apply to early childhood or pre-kindergarten teachers unless a State includes early childhood or pre-kindergarten as part of its elementary and secondary school system.

A-25. How do the teacher quality requirements apply to individuals working in extended learning time programs?

If services offered outside of regular school hours in a Title I extended learning time program provide instruction in core academic subjects designed to help students meet State or local academic standards, the persons providing such core academic instruction must meet the highly qualified teacher requirements. In extended learning time programs (which can include summer school), the school's regular teaching staff extend or continue the school's instructional day using the same or similar curricula, and therefore they must be highly qualified. However, if the instructor is not an employee of the LEA, the teacher quality requirements do not apply.

An extended learning time program that offers core academic instruction because an LEA has determined that particular students need additional time to learn to State standards can be distinguished from an after-school program offering academic enrichment, tutoring and homework assistance, including supplemental educational services under Section 1116 of *NCLB*. In the latter case, the highly qualified teacher (and paraprofessional) requirements do not apply. It is up to the State and the LEA to distinguish between instruction that is provided in extended time and instruction provided in enrichment programs.

A-26. Do teachers who primarily teach English language learners need to meet the highly qualified requirements?

Yes, if the teachers of English language learners provide instruction in core academic subjects. In addition, teachers of English language learners who teach in instructional programs funded under ESEA *Title III* must be fluent in English and any other language in which they provide instruction, including having written and oral communication skills.

A-27. Are charter school teachers required to be highly qualified under *NCLB*?

Yes. Charter school teachers must hold at least a bachelor's degree and must demonstrate competence in the core academic areas in which they teach. Charter school teachers must meet the certification requirements established in the State's public charter school law, which may differ from the requirements for full State certification.

A-28. Do short- and long-term substitute teachers need to meet the highly qualified requirements?

Substitutes take the place of teachers and, therefore, play a critical role in the classroom and the school. It is vital that they be able to perform their duties well. It is strongly recommended that substitutes, especially long-term substitute teachers, as defined by the State, meet the requirements for a highly qualified teacher as defined in Section 9101(23) of the ESEA and Section 602(10) of the IDEA. In establishing a definition for a long-term substitute, SEAs and LEAs should bear in mind that the law requires that parents of children in Title I schools must be notified if their child has been assigned to, or has been taught for four or more consecutive weeks by, a teacher who is not highly qualified [Section 1111(h)(6)].

A-29. Are middle and high school teachers in small rural schools required to be highly qualified in every core academic subject they teach?

Yes, all teachers who teach core academic subjects will have to be highly qualified in each subject they teach. The Department recognizes, however, that small, rural districts face special challenges in ensuring that all of their teachers are highly qualified in each subject by the end of the 2005–06 school year. To that end, the Department has offered additional flexibility to these districts.

Under this flexibility, States may permit covered LEAs (see following paragraph) that currently employ teachers who teach multiple subjects and are highly qualified in at least one core academic subject, but do not meet all the criteria for a highly qualified teacher in each of the core academic subjects they teach, to have until the end of the 2006-07 school year for these teachers to be highly qualified in each subject that they teach. Newly hired teachers in these covered LEAs will have three years from the date of hire to become highly qualified in each core academic subject that they teach. In order to use this flexibility, covered LEAs will need to: (1) ensure that all teachers in core academic subjects are highly qualified in at least one core academic subject they teach; (2) provide high-quality professional development that increases the teachers' content knowledge in the additional subjects they teach; and (3) provide mentoring or a program of intensive supervision that consists of structured guidance and regular, ongoing support so that teachers become highly qualified in the additional core academic subject(s) they teach.

The Department is offering this flexibility to all LEAs that are eligible to participate in the Small Rural School Achievement (SRSA) program. A district is eligible for this flexibility if the total number of students in average daily attendance at all of the schools in the district is fewer than 600, or each county in which a school in the district is located has a total population density of fewer than 10 persons per square mile; and all of the schools served by the district are designated with a school locale code of 7 or 8, as determined by the Secretary. If a district meets either of the first two conditions, the Secretary may grant the district a waiver from the school locale code criterion based on a demonstration by the district, and concurrence by the State educational agency, that the district is located in an area defined as rural by a governmental agency of the State. A list of the districts currently eligible for this extended teacher preparation time is available on the ED website, at: www.ed.gov/programs/reapsrsa/eligible04/index.html. Almost 4,900 districts, about one-third of all districts nationally, meet these criteria for small, rural districts. States with LEAs that employ this flexibility must submit an amendment to their consolidated applications notifying the Department of Education.

A-30. Must special education teachers who teach core academic subjects be highly qualified?

Yes. NCLB requires all teachers of core academic subjects, including special education teachers, to be highly qualified. The November 2004 reauthorization of IDEA reinforces this requirement. Subject to the special rules discussed in questions A-31 and A-32 below, IDEA now requires that all special education teachers who teach core academic subjects be highly qualified. The reauthorized IDEA adds the requirement that in order to be highly qualified, special education teachers must hold a special education certificate or be licensed as special education teachers in addition to holding a bachelor's degree and demonstrating subject-matter competency. The complete definition of a "highly qualified" special education teacher is in Section 602(10) of the IDEA, which can be found in Appendix D of this document.

A-31. If a special education teacher teaches core academic subjects exclusively to students who are being assessed against alternate academic achievement standards, at what subject-matter level must the special education teacher be highly qualified?

The 2004 IDEA amendments provide that if a special education teacher teaches core academic subjects *exclusively* to students who are being assessed against alternate achievement standards, the teacher must meet the highly qualified requirements for elementary school teachers and, for instruction above the elementary level have subject-matter knowledge appropriate to the level of instruction being provided. Please see Section 602(10)(C) of the IDEA for the complete text and the IDEA regulations when they become final to ensure compliance.

A-32. Must special education teachers who teach multiple core academic subjects exclusively to students with disabilities be highly qualified in all subjects they teach?

Yes. Special education teachers in this category, whether new to the profession or not, must be highly qualified. Special education teachers who are not new to the profession must demonstrate competence in all core subjects they teach, just as all teachers not new to the profession must do. States may, however, develop a multi-subject HOUSSE that allows teachers to demonstrate subject-matter competency in each of the core academic subjects they teach.

The 2004 IDEA amendments provide that special education teachers new to the profession who teach multiple core academic subjects and are highly qualified in mathematics, language arts, or science at the time they are hired, have two additional years after the date of hire to become highly qualified in all other academic subjects they teach, including through use of a HOUSSE. Please see Section 602(10)(D) of the IDEA for the complete text and the IDEA regulations when they become final to ensure compliance.

A-33. What activities may special education teachers carry out if they are not highly qualified in the core academic content area being taught?

There are many activities that special education teachers may carry out that would not, by themselves, require those teachers to be highly qualified in a particular subject-matter. Special educators who do not directly instruct students in any core academic subjects or who provide only consultation to highly qualified teachers of core academic subjects in adapting curricula, using behavioral supports and interventions, or selecting appropriate accommodations do not need to demonstrate subject-matter competency in those subjects. These special educators could also assist students with study skills or organizational skills and reinforce instruction that the child has already received from a highly qualified teacher in that core academic subject.

States and districts should consider the needs of special education teachers as they implement *Title II, Part A*, particularly for activities that relate to professional development and reform of teacher certification or licensing procedures. By coordinating

the appropriate use of resources from other Federal programs, such as the Individuals with Disabilities Education Act (IDEA), States can ensure that *Title II, Part A* funds are used effectively to help establish a coherent and comprehensive system that supports teacher quality.

A-34. Must veteran subject specialists who teach in elementary schools be highly qualified in all subjects or just the subject they teach?

Many elementary schools employ subject-area specialists—such as reading, science or foreign language teachers—who only teach those specific subjects. A single-subject teacher in an elementary school who is not new to the profession may demonstrate the subject-matter competency needed to be highly qualified either by passing a rigorous State test in that subject or by satisfying the State's HOUSSE procedures.

A-35. Do the highly qualified teacher requirements apply to teachers who work in juvenile institutions, correctional institutions, and other alternative educational settings?

Section 1119 of Title I requires each SEA that receives Title I, Part A funds to develop (and hence implement) a plan to ensure that all teachers teaching in core academic subjects within the State are highly qualified. This requirement extends to all teachers of core academic subjects who are employed by agencies or entities under the authority of the SEA. As a result, it applies to teachers employed by LEAs as well as teachers employed by the SEA or other entities under the SEA's authority. Thus, if juvenile institutions, correctional institutions, and other alternative educational settings are either LEAs under State law or under the authority of the SEA, teachers of core academic subjects employed by those entities must be highly qualified.

If such entities are neither LEAs as defined under State law nor under the SEA's authority, the section 1119 requirements regarding highly qualified teachers do not apply to teachers they employ. Nevertheless, it is critical that all students, regardless of school setting, be able to achieve to the State's content and academic achievement standards. We therefore urge all educational entities not subject to the highly qualified teacher requirements to ensure that students have teachers with the content knowledge and skills needed to help them succeed.

A-36. May a teacher who is highly qualified in one State also be considered highly qualified in other States?

Each State uses its own standards and procedures to determine whether those who teach within that State are highly qualified. Just as each State determines when and on what basis to provide full certification or licensure to teachers already certified in other States, each State determines when and on what basis to accept the determination of another State that a particular teacher is highly qualified. Thus, each State determines whether or not to consider the teacher from another State to be both "fully certified" **and** having demonstrated adequate subject-matter competency in each subject the teacher will teach.

A-37. Are LEAs required to inform parents about the quality of a school's teachers?

Yes. At the beginning of each school year, an LEA that accepts *Title I, Part A* funding must notify parents of students in Title I schools that they can request information regarding their child's teacher, including, at a minimum: (1) whether the teacher has met the State requirements for licensure and certification for the grade levels and subject-matters in which the teacher provides instruction; (2) whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived; (3) the college major and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree; and (4) whether the child is provided services by paraprofessionals, and if so, their qualifications.

In addition, each Title I school must provide each parent "timely notice that the parent's child has been assigned, or has been taught for 4 or more consecutive weeks by, a teacher who is not highly qualified" [Section 1111(h)(6)].

A-38. If a State or LEA enters into a contract with a private school for the education of children living in the State or area served by the LEA, do the "highly qualified teacher" requirements of NCLB apply to teachers in that private school?

No. Under the statute, the highly qualified teacher requirements apply only to public school teachers.

A-39. If a highly qualified teacher is not available locally to teach a certain subject, may a district use a highly qualified teacher who is located elsewhere to teach that subject through distance learning?

Yes, highly qualified teachers may teach "virtual" classes through distance learning. For instance, rural districts might take advantage of broadband Internet connectivity to allow students to take advanced science, mathematics, or foreign language courses from highly qualified teachers throughout or outside of the State. The highly qualified teacher must be responsible for providing the direct instruction through distance learning and be accountable for monitoring student progress and assigning grades. Students may be assisted by on-site personnel (e.g., teacher aides, paraprofessionals, or teachers who are not highly qualified in that subject) responsible for supporting instruction provided by the highly qualified teacher.

A-40. Must a college or university faculty member who teaches core academic subjects to secondary school students be highly qualified?

A faculty member must be highly qualified if the LEA directly employs him or her. If, on the other hand, an LEA (1) pays tuition to an institution of higher education to permit students to take core academic courses at the college or university, or (2) acquires the teaching services of the college or university faculty member at the LEA's school through a contract or a memorandum of understanding with that individual's institution

of higher education, then the faculty member is not an employee of the LEA and is not subject to the highly qualified teacher requirements.

A-41. Can a State consider an applied mathematics or science course that is team taught by a highly qualified mathematics or science teacher and career and technical education teacher to be taught by a highly qualified teacher?

If the highly qualified teacher of mathematics and science is collaborating with the career and technical education teacher in the design of the lessons, teaching the mathematics or science concepts and grading the assignments and assessments, the course can be considered as taught by a highly qualified teacher. While the career and technical education teacher may be in a better position to set the context for the application of a particular mathematics or science context, either teacher may introduce the concept. The concept must, however, be thoroughly taught by the mathematics or science teacher.

Paraprofessionals

A-42. What are the requirements in *No Child Left Behind* for paraprofessionals or teachers' aides?

Paraprofessionals—aides who provide instructional support services in a school—can be a valuable resource in any school setting. *No Child Left Behind* sets clear guidelines for academic qualifications for individuals assisting in instruction in Title I-funded programs. The law allows those teachers' aides to support instruction if they have met certain academic requirements: they must have at least an associate's degree or have completed at least two years of college, or meet a rigorous standard of quality and demonstrate, through a formal State or local assessment, knowledge of, and the ability to assist in instruction in reading, writing, and mathematics, reading readiness, writing readiness, or mathematics readiness, as appropriate.

However, aides in Title I schools do not need to meet these requirements if their role does not involve instructional support. Thus, paraprofessionals who serve only as hall monitors, interpreters, or parental involvement aides do not have to meet the same academic requirements. Similarly, if an aide working with special education students does not provide any instructional support (such as one who solely provides personal care services), that person is not considered a paraprofessional under Title I, and the academic requirements do not apply. More information on the NCLB requirements for paraprofessionals is available at: http://www.ed.gov/policy/elsec/guid/paraguidance.doc. Also see question F-8 in this Guidance.

NCLB required that paraprofessionals demonstrate competency no later than four years after the law's enactment, or January 8, 2006. On June 17, 2005, Deputy Secretary of Education Ray Simon announced that this deadline would be extended to the end of the 2005-06 school year, bringing it into conformity with the deadline by which teachers of core subjects must be highly qualified.

B. PROFESSIONAL DEVELOPMENT

B-1. What is meant by "high-quality professional development"?

The term "high-quality professional development" means professional development that meets the criteria contained in the definition of professional development in *Title IX*, Section 9101(34) of ESEA. Professional development includes, but is not limited to, activities that:

- Improve and increase teachers' knowledge of academic subjects and enable teachers to become highly qualified;
- Are an integral part of broad schoolwide and districtwide educational improvement plans;
- Give teachers and principals the knowledge and skills to help students meet challenging State academic standards;
- Improve classroom management skills;
- Are sustained, intensive, and classroom-focused and are not one-day or short-term workshops;
- Advance teacher understanding of effective instruction strategies that are based on scientifically based research; and
- Are developed with extensive participation of teachers, principals, parents, and administrators.

B-2. What strategies can States use to help LEAs adopt and implement more effective teacher professional development activities?

States can, for example: (1) develop guidance on effective strategies for improving teacher quality and provide that guidance to the LEAs; (2) adopt a formal statement of State priorities; (3) improve technical assistance and monitoring for LEAs; (4) sponsor conferences and other meetings that address issues related to improving teacher performance; and (5) disseminate information about successful programs and practices.

In providing this assistance, States should consider the needs of all teachers - whether they are regular classroom teachers, special education teachers, or teachers of English language learners - so that a unified, comprehensive system of professional development is available to all who need to be highly qualified. States might also provide guidance to LEAs on effective ways of coordinating resources available for professional development from programs such as *Title I* and *Title III* of the ESEA and IDEA, Part B.

B-3. The statute authorizes LEAs to use program funds for "teacher advancement initiatives that promote professional growth and emphasize multiple career paths, such as paths to becoming a career teacher, mentor teacher, or exemplary teacher…" [Section 2113(c)(14)]. What are some options by which LEAs can implement these activities?

Too often, the best career advancement option currently available for teachers is to become school principals or LEA administrators. This leaves fewer excellent, experienced teachers working directly with children in the classroom. Teacher advancement initiatives that offer multiple career paths can provide professional opportunities without having teachers leave the classroom. For example, an LEA could establish a system whereby teachers could opt to pursue various career paths, such as:

- becoming a career teacher, staying in the classroom with traditional instructional duties;
- becoming a mentor teacher, staying in the classroom but taking on additional duties such as mentoring first-year teachers and receiving additional pay for these duties; or
- becoming an exemplary teacher, based on a distinguished record of increasing student academic achievement, and training other teachers to do the same while receiving additional pay for these duties.

B-4. Does the law contain any restrictions on the amount of *Title II, Part A* funds that an SEA may spend on professional development?

No. However, in considering how to spend its State-level funds, the SEA should focus on its need to ensure that all teachers its LEAs employ who teach in core academic subjects meet the requirements for a highly qualified teacher by the end of the 2005-2006 school year.

B-5. In many rural areas, offering high-quality professional development activities can be challenging because there may not be a critical mass of teachers who need help in the same subject. How can rural districts address this situation?

One possible way that rural districts can provide teachers with professional development activities is by offering distance-learning opportunities. Many State colleges and universities currently offer distance learning. Through distance learning a teacher in a rural area can take professional development courses that meet his/her specific needs. For example, the Department recently awarded a grant to the Western Governors University (WGU) to develop and implement teacher training and certification courses. WGU is currently seeking State approvals for its teacher licensure and certification programs. WGU's website, at www.wgu.edu/index.asp, explains how teachers from any location can access services.

B-6. What types of professional development can assist veteran teachers to develop and demonstrate subject-matter competence?

States have the flexibility, in designing their HOUSSE procedures, to determine the extent to which various types of professional development activities can assist teachers to develop and demonstrate subject-matter competence. For instance, States may determine how professional development provided by particular institutions or organizations (e.g., universities or community colleges, textbook publishers, curriculum developers, comprehensive school reform model developers, or any other specialized in-service training provider) contributes to a teacher's subject-area knowledge. However, unless it is unusually intensive, a single professional development experience by itself will not provide the content knowledge necessary to enable a teacher not new to the profession to demonstrate subject-matter competency.

C. FEDERAL AWARDS TO THE STATE EDUCATIONAL AGENCY

C-1. What is the purpose of the *Title II, Part A* program?

The purpose of *Title II, Part A* is to increase the academic achievement of all students by helping schools and districts improve teacher and principal quality and ensure that all teachers are highly qualified. Through the program, State and local educational agencies (SEAs and LEAs), and State agencies for higher education (SAHEs) receive funds on a formula basis. Eligible partnerships consisting of high-need LEAs and institutions of higher education (IHEs) receive funds that are competitively awarded by the SAHE (see Section G).

In exchange, agencies that receive funds are held accountable to the public for improvements in academic achievement. *Title II, Part A* provides these agencies with the flexibility to use these funds creatively to address challenges to teacher quality, whether they concern teacher preparation and qualifications of new teachers, recruitment and hiring, induction, professional development, teacher retention, or the need for more capable principals and assistant principals to serve as effective school leaders.

C-2. Did this program exist prior to *No Child Left Behind* (NCLB)?

Title II, Part A replaced the Eisenhower Professional Development and the Class-Size Reduction programs. The Eisenhower program mostly focused on professional development in mathematics and science, while *Title II, Part A* can support teacher professional development across all core academic subjects. The importance of professional development in mathematics and science remains a high priority, but many other activities are now allowed as well.

C-3. How do the flexibility and transferability provisions of NCLB affect the *Title II, Part A* program?

The flexibility and transferability provisions, described in greater detail on the Department's website at http://www.ed.gov/nclb/freedom/local/flexibility/index.html, affect the *Title II, Part A* program as follows:

State-Flex (ESEA Sections 6141 through 6144)
An SEA with State-Flex authority may consolidate *Title II, Part A* funds that are available for State-level activities and State administration with State-level funds available under certain other programs. The SEA may then use the combined funding for any ESEA purpose in order to make adequate yearly progress and advance the educational priorities of the State and the LEAs with which the State enters into performance agreements.

Within a State-Flex State, an LEA that enters into a performance agreement with its SEA may similarly consolidate *Title II, Part A* funds with certain other Federal funds. The LEA can then use those funds for any ESEA purpose consistent with the SEA's State-Flex plan in order to meet the State's definition of adequate yearly progress, improve student academic achievement, and narrow achievement gaps.

The SEA, and the LEAs with which the SEA enters into performance agreements, must provide for the equitable participation of students and professional staff in private schools consistent with Section ESEA 9501. ESEA Sections 9502, 9503, and 9504 apply to all services and assistance provided with the consolidated funds. Additional information about State-Flex can be found at www.ed.gov/programs/stateflex/index.html.

Local-Flex (ESEA Sections 6151 through 6156)
An LEA that enters into a Local-Flex agreement with the Secretary may consolidate *Title II, Part A* funds with certain other Federal funds and, consistent with the purposes of the Local-Flex program, it may then use those funds for any ESEA purpose in order to meet the State's definition of adequate yearly progress, improve student academic achievement, and narrow achievement gaps.

The local flexibility demonstration agreement must contain an assurance that the LEA agrees that in consolidating and using funds under the agreement, the LEA will provide for the equitable participation of students and professional staff in private schools consistent with Section 9501. Sections 9502, 9503, and 9504 apply to all services and assistance provided with the consolidated funds. Additional information about Local-Flex can be found at www.ed.gov/programs/localflex/index.html.

Transferability (ESEA Sections 6121 through 6123)
Under this flexibility authority, an SEA may transfer up to 50 percent of the non-administrative funds that it receives under certain Federal programs to other specified programs that address more effectively its unique needs, or it may transfer those funds to

Title I, Part A. This authority allows a portion of an SEA's State-level non-administrative funds to be transferred into or out of the *Title II, Part A* program.

Likewise, an LEA (except an LEA identified for improvement or subject to corrective action under Section 1116(c)(9)) may transfer up to 50 percent of the funds awarded to it by formula under certain programs to its *Title II, Part A* allocation (or to other specified allocations) or to its allocation under Part A of *Title I*. An LEA may also transfer up to 50 percent of its *Title II, Part A* funds to certain other programs. (There are special transferability rules governing LEAs identified for improvement or corrective action.)

Each SEA or LEA that transfers funds under these sections must consult with private school officials, in accordance with Section 9501, if such a transfer would move funds from a program that provides for the participation of private school students, teachers, or other educational personnel [Section 6123(e)(2)]. Additional information on the transferability authority can be found at www.ed.gov/programs/transferability/index.html.

C-4. What is scientifically based research and how does it apply to this program?

Section 9101(37) of ESEA, as amended by *NCLB,* defines scientifically based research as "research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs." The statute then explains that this kind of research:

1. Employs systematic, empirical methods that draw on observation or experiment;

2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. (Note: practitioner journals or education magazines are *not* the same as peer-reviewed academic journals.)

The statute also requires that all SEA activities supported with program funds must be based on a review of scientifically based research, and the SEA must maintain documentation that explains why it expects those activities to improve student academic achievement.

C-5. What general statutory and regulatory provisions apply to *Title II, Part A*?

Title IX of the ESEA contains general provisions that apply to *Title II, Part A*, as well as to other ESEA programs.

- Part A of *Title IX* contains definitions of many terms used in the ESEA.
- Part B contains provisions regarding the consolidation of administrative funds.
- Part C contains provisions regarding consolidated State and local plans and applications.
- Part D contains provisions regarding waivers of statutory and regulatory requirements.
- Finally, Part E contains certain uniform provisions.

The General Education Provisions Act (GEPA), 20 U.S.C. 1221-1234i, also contains general statutory requirements applicable to most programs administered by the Department, including *Title II, Part A*. For instance, GEPA contains the "Tydings amendment," which provides grantees an additional year to obligate funds under certain programs, including *Title II, Part A*. GEPA also includes provisions addressing matters such as forward funding, protection of students' and parents' privacy rights under the Family Educational Rights and Privacy Act (FERPA), and various administrative appeal procedures.

The *Title II, Part A* program does not have program-specific regulations; however, both the general ESEA regulations in Title 34 of the Code of Federal Regulations (CFR) Part 299 and the following parts of the Education Department General Administrative Regulations (EDGAR) apply to the program: 34 CFR Parts 74, 76, 77, 80, 81, 82, 85, 97, 98, and 99. SEAs and LEAs should become particularly familiar with Parts 76 and 80, as they address a range of matters important to the everyday administration of the *Title II, Part A* program.

C-6. Can funds from other programs authorized in *NCLB* be used to improve teacher quality?

Yes, other key programs authorized in NCLB provide funds that can, or in some cases must, be used to improve teacher quality. These include, but are not limited to:

- *Title I, Part A*, which requires that LEAs use at least 5 percent of their *Title I* funds for professional development activities to ensure that teachers who are not currently highly qualified meet that standard by the end of the 2005-06 school year [Section 1119(l)]. In addition, any school identified as in need of improvement for failing to make adequate yearly progress must spend 10 percent

of its *Title I, Part A* funds on professional development, including teacher mentoring programs [Section 1116(c)(7)(A)(iii)].

- *Title I, Part B*, the *Reading First* program, which requires grantees to build on scientifically based reading research to implement comprehensive instruction for children in kindergarten through third grade. From the 20 percent State set-aside funds, 65 percent may be spent in preparing teachers through professional development activities so the teachers have tools to effectively help their students learn to read [Section 1202(d)(3)].

- *Title II, Part B*, the *Mathematics and Science Partnerships* program, which provides funding to SEAs to competitively establish IHE-LEA partnerships to enhance teacher subject-matter knowledge and the quality of teaching in mathematics and science [Section 2201(a)].

- *Title II, Part C*, the *Troops-to-Teachers* and *Transition to Teaching* programs, which support efforts to help school districts hire, train, and retain individuals from other careers and backgrounds as teachers in high-need schools [Sections 2303 and 2313].

- *Title II, Part D*, the *Enhancing Education Through Technology* program, under which each local recipient of funds must use at least 25 percent of those funds for ongoing, sustained, and high-quality professional development on the integration of advanced technologies into curriculum and instruction and on the use of those technologies to create new learning environments [Section 2416(a)].

- *Title III, Part A*, which authorizes LEAs to use formula grant funds for professional development of teachers providing instruction to students needing English language acquisition and language enhancement [Section 3111(a)(2)(A)].

- *Title V, Part A*, which authorizes LEAs to use formula grant funds to provide professional development activities carried out in accordance with *Title II, Part A*, as well as to recruit, train, and hire highly qualified teachers to reduce class size [Section 5131(a)(1)].

- *Title VII, Part A*, the *Indian, Native Hawaiian, and Alaska Native Education* program, which requires a comprehensive program for meeting the needs of Indian children that, among other things, calls for professional development opportunities to ensure that teachers and other school professionals have been properly trained [Section 7114(b)(5)].

C-7. Who is eligible to receive a *Title II, Part A* State allocation?

All States (i.e., each of the 50 States, the District of Columbia, and Puerto Rico), the Outlying Areas (United States Virgin Islands, Guam, American Samoa, and the

Commonwealth of the Northern Mariana Islands), and the Bureau of Indian Affairs (BIA) are eligible to receive *Title II, Part A* State allocations. The Freely Associated States (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) are not eligible to receive *Title II, Part A* funds.

C-8. How does the Department determine each State's *Title II, Part A* allocation?

Allocations to the Outlying Areas and BIA
Prior to calculating State allocations, the Secretary reserves one-half of one percent of the *Title II, Part A* appropriation for awards to the Outlying Areas (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) and one-half of one percent for an award to the BIA.

Allocations to States
In determining the amount of each State's allocation, the Department first allots to each State the amount the State received for FY 2001 under the former Eisenhower Professional Development and Class-Size Reduction programs. (In any fiscal year, if the *Title II, Part A* appropriation is too small to permit allocations that equal at least the amounts that States received under these programs in FY 2001, the Department will ratably reduce each State's allocation for that fiscal year.)

The Department distributes any remaining funds based on the following formula:

- 35 percent based on each State's relative population of children ages 5 through 17; and
- 65 percent based on each State's relative numbers of individuals ages 5 through 17 from families with incomes below the poverty line.

At a minimum, each State receives at least one-half of one percent of the additional funds allocated under this formula (i.e., the money appropriated above the FY 2001 base level).

C-9. How much of the State's allocation must the SEA reserve for subgrants to LEAs, and how much do the SEA and SAHE retain for State-level activities and competitive grants, respectively?

Under this program, the SEA must provide 95 percent of the State's *Title II, Part A* funds (after reserving up to one percent for SEA and SAHE administration) for subgrants to LEAs. The SEA retains 2.5 percent of the funds for State-level activities described in Section 2113(c). The SAHE receives 2.5 percent of the funds (up to $125 million among all SAHEs) to make competitive subgrants to eligible IHE-LEA partnerships as described in Section I of this document [Sections 2131-2134]. See the table below for a visual representation of the allocations.

TITLE II, PART A WITHIN-STATE ALLOCATIONS
ESEA of 1965 as amended by *No Child Left Behind Act of 2001*

2.5% of 99% for SEA-administered State activities	1% of 100% for SEA and SAHE administration
2.5% of 99% for competitive subgrants to eligible partnerships[1] (SAHE portion)	
95% of 99% reserved to make subgrants to local educational agencies	

[1] Up to a maximum of $125 million total for all SAHEs

C-10. What portion of the State's total allocation is available for SEA and SAHE administration?

As noted above, up to one percent of the State allocation can be reserved for administration and must be shared by the SEA and SAHE. Absent an agreement between the SEA and SAHE to the contrary, the Department will provide the SAHE the greater of:

1. The amount the FY 2001 funds it had received for administration under the predecessor *Title II*, ESEA Eisenhower Professional Development Program, or

2. Five percent of the amount available each year for subgrants to partnerships under Section 2113(a)(2) of the ESEA, as amended by NCLB.

The Department will award the remainder of the one percent to the SEA for its costs of administration and planning.

C-11. If an SEA and SAHE cannot use all of the Title II, Part A funds allocated to the State for administration, for what may the unneeded administrative funds be used?

Under Title II, Part A, the U.S. Department of Education reserves one percent of the State allocation for administration, divided between the SEA and the SAHE. Of the remaining allocation, the State must use 95 percent for LEA subgrants, 2.5 percent for SAHE grants, and the State shall "use the remainder of the funds for State activities described in subsection (c)." (Section 2113(a)(3)). Therefore, if there are administrative funds not needed either by the SEA or the SAHE, these funds should be used for additional State-level activities authorized by section 2123 of the ESEA.

One percent of the total Title II, Part A allocation is available for SEA and SAHE administration If, for example, the SEA is the agency that cannot use all of its allotment of the administrative funds, it should consult with the SAHE to determine whether the SAHE needs some of these funds for reasonable and necessary administration of the

SAHE-funded subgrants before any administrative funds are shifted to State level activities.

C-12. What is the period of availability for *Title II, Part A* funds?

Title II, Part A, like most of the ESEA formula programs, is "forward funded." The first day that the Department may award funds for obligation to States with approved plans is July 1 following the appropriation. The Department tries to make funds available as close to that date as possible. Funds remain available for obligation, whether they are available to the State, the LEAs, or the SAHE, for a period of 27 months after July 1. This 27-month period includes an initial 15-month period of availability and an automatic 12-month extension permitted under the "Tydings Amendment." As an example, funds appropriated for Federal fiscal year (FY) 2005 first become available to the States on July 1, 2005, and remain available for obligation through September 30, 2007.

When the period of availability for obligations ends, grantees may not incur any further obligations, but they do have an additional 90-day liquidation period during which all outstanding obligations must be paid. Continuing the example above, FY 2005 funds can be drawn down and spent through December 31, 2007, to cover remaining unpaid obligations. On January 1, 2008, the Department will make the account unavailable for further transactions.

C-13. What are the SEAs' reporting responsibilities?

Under NCLB, the SEA is required to prepare and submit to the Secretary the information the Department requests in the consolidated State performance report, the annual State report to the Secretary described in Section 1111(h)(1), and the State report required under Section 1119(b). The Department will work with the States to help them meet these requirements, as well as to meet any other data collection or reporting requirements that the Department may establish in the future to ensure it has the information necessary to effectively manage the *Title II, Part A* program.

C-14. When and how must an SEA or SAHE monitor subgrant activities?

The Education Department General Administrative Regulations (EDGAR) govern the administration of subgrants. General requirements for provision of technical assistance, monitoring, assisting in project evaluations (to the extent that they are required), and developing procedures and rules to ensure the proper expenditure of program funds are enumerated in Section 76.772. Furthermore, Section 80.40(a) requires that States "...monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved."

Under these provisions, SEAs and SAHEs must monitor subgrantees for compliance with Federal statutes and regulations, applicable State rules and policies, and the approved State and subgrant application. They are encouraged to conduct a regular, systematic review of all *Improving Teacher Quality State Grants* activities, using monitoring

instruments sufficiently comprehensive to determine that subgrantees comply with program requirements and make progress toward meeting all objectives of their applications. Simply reviewing audit or annual reports is not acceptable. If an SEA or SAHE has reason to believe that a subgrantee is not adequately implementing its projects, it should monitor more carefully and frequently and take action to correct problems.

An SEA or SAHE may monitor in any manner that ensures compliance with program requirements. For some *Improving Teacher Quality State Grants* requirements, such as a subgrantee's use of program funds in ways that reflect its approved application, the State may find that on-site monitoring is the most suitable method. On-site monitoring should take place as often as necessary to ensure that subgrant activities comply with program requirements.

In addition to on-site visits, either agency may require periodic reports, conduct telephone interviews, hold subgrantee conferences, and use other strategies to promote and ensure adherence to applicable requirements. Whatever the method selected, it is important that it be used systematically and that the results be documented. An SEA and SAHE should maintain a system for reporting problems and recommending corrective actions to subgrantees, and for any follow-up that may be necessary.

D. STATE USE OF FUNDS

Title II, Part A provides "State Activities" funds to SEAs to support improvements in the recruitment, hiring, training, and retention of their teaching force. Consistent with State law, SEAs and other State agencies can exercise significant discretion and authority in how LEAs improve the overall quality of their teachers. All activities pursued, however, must be grounded in scientifically based research.

For example, States may use *Title II, Part A* funds to promote periodic teacher recertification, establish the standards for recertification, require schools to develop school improvement plans that build on the importance of high-quality professional development, and assist LEAs in developing financial incentive programs to encourage highly qualified and effective teachers to teach in high-need schools. An SEA also may work with its LEAs to ensure that the proposed activities described in their program applications reflect proper consideration of these State priorities and initiatives.

Even where a State chooses not to mandate that LEAs and teachers adopt certain practices, the SEA still has a significant role to play in ensuring that LEAs propose sound uses of their *Title II, Part A* funds. The flexibility (in exchange for accountability) that the law now offers LEAs is flexibility to make sound, informed decisions, not -- as evidenced by the comprehensive set of LEA application requirements in Section 2122 -- flexibility to make easy decisions. SEAs should take seriously their statutory responsibility to "review and approve" these applications to ensure that the LEAs are not simply funding what is easiest.

For example, an SEA may feel strongly that an LEA will shortchange the professional development needs of its teachers if it spends disproportionate amounts of its *Title II, Part A*

funds on the salaries of teachers hired to reduce class size. Both activities are allowable uses of an LEA's *Title II, Part A* funds. However, using program funds to reduce class size at the expense of promoting improved teaching quality may not, for example, help the LEA to ensure either that all of its teachers are highly qualified by the end of the 2005-06 school year or that its teaching staff is effective. Where an SEA finds that an LEA application fails to reflect either the required application content or answers to basic questions such as these, the SEA may postpone awarding funds until it is satisfied with the LEA's proposal.

D-1. How may an SEA use its "State Activities" funds?

Consistent with the requirements of an individual State application [Section 2112(b)], an SEA must use these funds for one or more of the activities summarized below [Section 2113(c)]:

1. Reforming teacher and principal certification (including recertification) and licensure to ensure that teachers have the necessary subject-matter knowledge and teaching skills in subjects in which they teach, that certification or licensing requirements are aligned with challenging State academic content standards, and that principals have instructional leadership skills to help teachers teach and students learn;

2. Providing support for teachers new and not new to the profession and for principals through such activities as mentoring, team teaching, reduced class schedules, intensive professional development, and using standards or assessments to guide beginning teachers;

3. Carrying out programs to establish, expand, or improve alternative routes for State certification for teachers and principals (especially in the areas of mathematics and science) that will encourage entry into the teaching profession for highly qualified individuals with at least a baccalaureate degree, including mid-career professionals, military personnel, paraprofessionals, and recent college graduates with records of academic distinction;

4. Developing and implementing effective mechanisms for helping LEAs and schools to recruit and retain highly qualified teachers, principals, and pupil services personnel;

5. Reforming tenure systems, implementing teacher testing for subject-matter knowledge, and implementing teacher testing for State certification or licensure, consistent with *Title II* of the Higher Education Act (HEA);

6. Providing professional development for teachers and principals (and for pupil services personnel when the SEA determines their participation to be appropriate);

7. Developing systems to measure the effectiveness of specific professional development programs and activities in order to document gains in student academic achievement or increases in teacher mastery of academic subjects teachers teach;

8. Fulfilling the SEA's responsibilities for proper and efficient administration of *Title II, Part A*, including provision of technical assistance to LEAs;

9. Funding projects to promote interstate certification or licensing reciprocity for teachers and principals, provided that the reciprocity agreement does not lead to a weakening of State certification or licensing requirements;

10. Developing or assisting LEAs in the development of proven, innovative strategies to deliver intensive professional development activities that are both cost-effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning;

11. Supporting the training of teachers and administrators in effectively integrating technology into curricula and instruction;

12. Developing, or assisting LEAs in developing, merit-based performance systems and strategies that provide differential and bonus pay for teachers in high-need academic subjects and for teachers in high-poverty areas;

13. Assisting LEAs in developing and implementing professional development programs for principals that enable them to be effective school leaders and to prepare all students to meet challenging State content and student academic achievement standards, which may include the development and support of school leadership academies;

14. Developing, or assisting LEAs in developing, teacher advancement initiatives that promote professional growth and that emphasize multiple career paths and pay differentiation;

15. Providing assistance to teachers to enable them to meet certification, licensing, or other requirements in order to become highly qualified by end of the 2005-2006 school year;

16. Supporting activities to ensure that teachers are able to use State academic content and achievement standards and State assessments to improve instructional practices and student academic achievement;

17. Funding projects and carrying out programs to encourage men to become elementary school teachers; and

18. Establishing and operating a center that serves as a statewide clearinghouse for the recruitment and placement of K-12 teachers and establishes and carries out programs to improve teacher recruitment.

SEAs have the flexibility to (1) select those strategies and activities that will contribute most to the recruitment, hiring, training, and retention of highly qualified teachers and

principals, and (2) use *Title II, Part A* funds in ways that will have the greatest impact on increased student achievement for all students and on meeting the SEAs' responsibilities for overall accountability [Section 2141].

D-2. Does the law restrict the amount of *Title II, Part A* funds that an SEA may spend on activities to recruit and hire teachers?

No. However, in considering how much of its State-level funds it will spend on these or other allowable activities, the SEA should balance these needs against the need to ensure that all teachers of core academic subjects are highly qualified by the end of the 2005-2006 school year.

D-3. States are authorized to assist LEAs in developing merit-based performance or differential pay systems in "high-poverty schools and districts" [Section 2113(c)(12)]. How is "high-poverty" defined for this purpose?

The ESEA does not define the term "high poverty" for purposes of Section 2113(c)(12). Therefore each SEA is free to adopt a reasonable definition that reflects the demographics of the State.

A State may wish to consider whether to adopt the definition of "high-poverty" used in the *Title I, Part A* statute with regard to the requirement that the SEA include in its annual report card information on the qualifications of teachers, broken down by high- and low-poverty schools. This provision defines high-poverty to include schools in the top quartile of poverty in the State [Section 1111(h)(1)(C)(viii)].

[Note: For information on requirements for ***Maintenance of Effort*** and ***Supplement not Supplant***, see Section F.]

E. STATE AWARDS TO THE LOCAL EDUCATIONAL AGENCY

Administration

E-1. How does the SEA distribute funds to LEAs?

The amount the SEA distributes for each LEA's allocation reflects (1) a "hold harmless" based on the amount of funds the LEA received in FY 2001 under the former Eisenhower Professional Development and Class-Size Reduction programs, and (2) the LEA's share of any funds still remaining.

In any year in which the amount available in the State for LEA grants exceeds the sum of the "hold harmless" amounts for LEAs in the State, the SEA distributes the excess funds based on the following formula:

- 20 percent of the excess funds must be distributed to LEAs based on the relative number of individuals ages 5 through 17 who reside in the area the LEA serves (using data that is determined by the Secretary to be the most current); and

- 80 percent of the excess funds must be distributed to LEAs based on the relative numbers of individuals ages 5 through 17 who reside in the area the LEA serves and who are from families with incomes below the poverty line (also using data determined by the Secretary to be the most current).

(Note: in any year in which there are insufficient funds to provide the districts with their hold harmless amount, the SEA will ratably reduce each district allocation.)

E-2. What data should an SEA use for determining the portion of an LEA's program allocation that is attributable to the number of children who reside in the LEA?

The SEA must use the most recent available Census data, as determined by the Secretary, on the number of children age 5-17 who reside in the area served by the LEA. As of April 2005, the most recent data on the number of children age 5-17 in each school district can be found at: http://www.census.gov/hhes/www/saipe/school/sd02ftpdoc.html.

E-3. What data should an SEA use for determining the portion of an LEA's program allocation that is attributable to the number of children in poverty?

As in question E-2, the SEA must use the most recent available Census data, as determined by the Secretary, on the number of children age 5-17 from families with incomes below the poverty line. As of April 2005, the most recent family poverty data can be found at: http://www.census.gov/hhes/www/saipe/school/sd02ftpdoc.html. This site reports the most recent data (collected in 2002 but periodically adjusted to reflect more current Census data) on the number of children in poverty for nearly every school district in the United States. (Note: the Census Bureau data does not include poverty data for newly created districts or charter schools. See question E-5 for guidance in determining adjusted counts.)

E-4. How does the LEA apply for funds from the SEA, and what should be included in this application?

An LEA may receive a *Title II, Part A* subgrant by submitting to the SEA either a consolidated application or a program-specific application. The SEA determines the content of a consolidated local application and the procedure for submitting it [Section 9305]. A program-specific application must be based on a needs assessment and contain the appropriate descriptions and assurances [Sections 2122 (b) and (c)]. Whichever application an LEA submits, it must meet, and keep records to confirm that it has met, all statutory and regulatory requirements for *Title II, Part A*. Hence, the LEA should have records that describe:

1. Results of the local needs assessment;

2. The activities that the LEA will carry out with program funds, including the professional development provided to teachers and principals and how these activities will align with challenging State academic content standards, student

academic achievement standards, State assessments, and the curricula and programs tied to those standards;

3. How the proposed activities are based on a review of scientifically based research and how the activities will have a substantial, measurable, and positive impact on student academic achievement, and how the activities will be used as part of a broader strategy to eliminate the achievement gap that separates the performance of low-income and minority students from other students;

4. How the LEA will coordinate professional development activities authorized under *Title II, Part A* with professional development activities provided through other Federal, State, and local programs;

5. How the LEA will ensure that the professional development needs of teachers (including teacher mentoring) and principals will be met with the LEA's *Title II, Part A* funds;

6. How the LEA will integrate *Title II, Part A* funds with funds the LEA receives through the Enhancing Education Through Technology program (*Title II, Part D*) to train teachers to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy;

7. How the LEA's teachers, paraprofessionals, principals, other relevant school personnel, and parents have collaborated in preparing the local plan and will collaborate in the activities to be undertaken;

8. How the LEA will provide training to enable teachers to (1) teach to the needs of students with different learning styles - particularly students with disabilities, students with special learning needs (including those who are gifted and talented), and those with limited English proficiency; (2) improve student behavior in the classroom; (3) involve parents in their child's education; and (4) understand and use data and assessments to improve classroom practice and student learning; and

9. How the LEA will use *Title II, Part A* funds to meet the requirements of *Title I*, Section 1119 of ESEA for teachers and paraprofessionals. That section requires an SEA to establish annual measurable objectives for each LEA and school that, at a minimum, include an annual increase in the percentage of highly qualified teachers at each LEA and school to ensure that all teachers of core academic subjects are highly qualified by the end of the 2005-06 school year. It also includes a requirement for the LEA's plan to include an annual increase in the percentage of teachers who receive high-quality professional development [Section 2122].

An LEA must also maintain records that, consistent with the assurances that were submitted in its *Title II, Part A* program applications, describe how it will: (1) target program funds to schools that have the lowest proportion of highly qualified teachers, have the largest average class size, or are identified for school improvement under *Title I*,

Section 1116(b); and (2) comply with *Title IX*, Section 9501 of ESEA regarding participation of private school teachers.

E-5. If the number of districts within a State decreases or increases through consolidation or division of a district into new LEAs, how can the SEA determine the amount of *Title II, Part A* funds the newly created districts and the districts affected by the creation of the new districts should receive?

All LEAs in a state are entitled to *Title II, Part A* program funding on the basis of the ESEA's in-state allocation formula. SEAs may not exclude LEAs that did not exist in the prior year, including charter schools that the State identifies as LEAs.

As discussed in question E-1, the *Title II, Part A* LEA subgrant formula has two components:

1. A hold-harmless that depends upon the LEA's FY 2001 allocations under the former Eisenhower Professional Development and Class-Size Reduction programs, and
2. A supplement that depends upon the most current district enrollment data and poverty data gathered by the U.S. Census Bureau.

The *Title II, Part A* in-state allocation formula builds on a hold-harmless that relies upon data from years prior to when new LEAs were created or old LEAs were made smaller or eliminated, but the ESEA is silent on how an SEA should calculate the amount of the hold-harmless for such LEAs. While there may be other reasonable ways to calculate Title II, Part A allocations for newly created LEAs and the LEAs affected by their creation, the U.S. Department of Education suggests that SEAs use the procedures below to calculate Title II, Part A allocations for these districts. (See question E-6 for procedures for calculating allocations to schools, such as charter schools, that have LEA status but lack distinct geographic boundaries.)

A. A new LEA created by combining two or more previously existing LEAs, each of which was on the Census Bureau list

The SEA may calculate the hold-harmless portion of a newly created LEA's *Title II, Part A* allocations by aggregating the hold-harmless amounts (i.e., the FY 2001 Eisenhower and Class-Size reduction program funds) that the combining LEAs received in the year before they merged.

Similarly, the SEA may calculate the supplemental portion of a newly created LEA's allocation by combining the most current poverty data and district residence data for individuals 5-17 in the consolidating districts, and then using these new figures to determine the newly created LEA's relative share of the supplemental *Title II, Part A* funds that the SEA has available for allocation to all LEAs in the state. In this regard, the number of children ages 5-17 in poverty in the newly created LEA is equal to the sum of the total number of children ages 5-17 in the consolidating LEAs. In the same way, the

individuals 5-17 residing in the newly created LEA is equal to the sum of the individuals 5-17 residing in the consolidating LEAs.

B. A new LEA created from part of one or more LEAs previously on the Census Bureau list

1. <u>Calculating the Hold-Harmless</u>

Under section 2121(a)(2) of the ESEA, an LEA's *Title II, Part A* hold-harmless is the total of its FY 2001 allocation under the former Eisenhower Professional Development (Eisenhower) and Class-Size Reduction programs. For each program, the in-state allocation formula includes both a student-enrollment and poverty component. For the poverty component, the Eisenhower program relied on the LEA's prior year *Title I, Part A* allocation, which itself relied partly on Census Bureau poverty data, although a few States relied instead on alternative poverty data such as free and reduced lunch eligibility. The Class-Size Reduction program relied upon the most recent Census Bureau data on the numbers of children from families in poverty in the LEA.

Except when existing districts consolidate, these provisions do not work when LEAs are created or district boundaries change because it is impossible to determine the number or proportion of children who, years ago, lived in poverty in the area that a newly created LEA serves. It is, however, important to fund newly created LEAs in the way that most closely approximate the statutory formula.

In the absence of data that reflect a more precise way to establish the hold-harmless amounts, an SEA may calculate the portion of the FY 2001 hold-harmless of the "sending LEA(s)" (i.e., LEA(s) from which the new LEA is formed) that the SEA would transfer to the newly created LEA by

1. Determining the percentage of the Eisenhower Professional Development and Class-Size Reduction funds from the sending LEA(s) that would be attributable to the newly created LEA if one used *current* data on both student enrollment and poverty, and

2. Multiplying this percentage by the hold-harmless of the sending LEA(s).

The result is the newly created LEA's hold-harmless. Deducting a sending LEA's contribution from its existing hold-harmless yields the sending LEA's revised hold-harmless.

Of course, given the complexity of the Eisenhower and Class-Size Reduction program formulas, the steps needed to perform this calculation of hold-harmless for each LEA are a bit more complicated.

a. Eisenhower Professional Development

Under the former Eisenhower program an LEA received 50 percent of its allocation based on the relative size of student enrollment in public and private schools within its boundaries, and 50 percent based on the relative amount of the district's *Title I, Part A* allocation for the preceding fiscal year.

- Relative Student Enrollment: The SEA determines the student enrollment of the newly created LEA and adds to it the student enrollment of all private schools within the boundaries of that LEA. The SEA also determines student enrollment of the sending LEA(s) and adds to it the student enrollment of the private schools within its/their boundaries, all at a date the SEA chooses. The SEA then divides the total public and private student enrollment of the newly created LEA by the total public and private student enrollment of all LEAs in the State. This yields the newly created LEA's relative student enrollment, i.e., the proportion of the total of its public and private student enrollment as a percentage of the total public and private school student enrollment of all LEAs in the State. The SEA does the same for each sending LEA to determine its/their revised relative student enrollment.

NOTE: The SEA allocates funds to LEAs under both the Safe and Drug-Free Schools and Communities program and Innovative Programs (Titles IV-A and V-A of the ESEA) on the basis, in part, of the relative share of enrollment of public and private schools within the area the LEA serves. Hence, the SEA will have these enrollment data for other LEAs in the State.

- *Title I, Part A* allocation: States use different data sources to determine the relative share of districts' *Title I* allocations. Because a newly created LEA is likely entitled to an allocation of *Title I, Part A* funds, the SEA's *Title I, Part A* coordinator should be consulted about how the newly created and sending LEAs' relative amounts of *Title I* allocations are calculated. For additional information, see ED's guidance on allocation of *Title I, Part A* funds to newly created LEAs at http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc.

Calculating the hold-harmless attributable to the former Eisenhower program: The SEA multiplies the relative student enrollment for the newly created LEA by one half of the FY 2001 Eisenhower funds the SEA received for allocation to all LEAs in the state. The SEA then multiplies the newly-created LEA's relative share of the newly created *Title I, Part A* allocation by one half of the FY 2001 Eisenhower funds the SEA received for allocation to all LEAs in the state. Adding these two results yields the amount of the *Title II, Part A* hold-harmless for the newly created LEA that is attributable to the former Eisenhower program.

The SEA then repeats this procedure for each of the sending LEAs to yield the revised hold-harmless amount attributable to the former Eisenhower program for each of these LEAs.

b. Class-Size Reduction

Under the former Class-Size Reduction program, an LEA received 20 percent of its allocation based on the relative size of student enrollment in public and private schools within its boundaries, the same factor used in the Eisenhower program allocation. Eighty percent of the allocation was based on the relative number of children ages 5 to 17 from families with incomes below the poverty line.

- Relative Student Enrollment: The SEA should calculate this factor for newly created and sending LEAs in the same way it did for the Eisenhower Program.

- Students in Poverty: The Census Bureau does not collect data on the number of people ages 5-17 from families with incomes below the poverty line for newly created LEAs. The Department of Education is not aware of any data source other than the Census Bureau that can provide data that reflect the statutory requirement that children ages 5-17 be from families with incomes below the "poverty line," a term defined in section 9101(33) of the ESEA. Therefore, the SEA must obtain the best possible estimate of the numbers of children from families in poverty for each newly created LEA, and then subtract these counts, as appropriate, from each sending LEA.

If the SEA can readily obtain the number of such children who now attend the newly created LEA from both the newly created and sending LEAs, it must use these data. In most cases, however, the SEA will not know how many children from families with incomes below the poverty line attend schools in LEAs for which the Census Bureau does not collect these data. Where this is the case, the SEA may estimate the number of these children in each affected district by using alternative data sources, as described below.

Determining the Number of Poor Children Enrolled in the LEAs

To estimate the number of children from families living below the poverty line in newly created and sending LEAs, SEAs may use the following procedures as long as the alternative data used are available for *all* LEAs in the State.

Step 1. The newly created LEA and each sending LEA report to the SEA a count of poor children enrolled in the LEA's schools using alternative poverty data, such as children eligible for free- and reduced-price lunches, from the same time period.

Step 2. The SEA calculates, on a statewide basis, a "State-equating factor":

$$\frac{\text{The total number of children in poverty ages 5-17 as reported by the Census Bureau}}{\text{The total number of poor children enrolled in schools operated by LEAs on the basis of the alternative poverty data.}}$$

Step 3. The SEA multiplies the number of poor children reported by the newly created LEA and each sending LEA on the basis of alternative poverty data by the State-equating factor. The result is the Census poverty estimate for the newly created and sending LEAs, i.e., the estimated number of children ages 5-17 in these LEAs from families with incomes below the poverty line.

Factoring in Private School Enrollment: The Census Bureau count of children ages 5-17 from families with incomes below the poverty line includes children who attend both public and private schools. Because each LEA must provide equitable services to children attending private schools, it is important to include an estimate of the number of children enrolled in private schools in the count of children in poverty. Absent better information that the SEA may have available, we assume in steps 4-7 that both the residence of children enrolled in private schools, and the percentages of poor children enrolled in private schools, are evenly distributed across each sending LEA.

Step 4. The newly created LEA reports to the SEA its total 5-17 enrollment and identifies the LEAs from which those children came. The SEA also obtains the 5-17 enrollment from the sending LEA(s), and, if they are not already adjusted, adjusts these enrollments to reflect the enrollment of the newly created LEA. For each sending LEA, the SEA determines the proportion of enrolled students who have and have not moved to the newly created LEA.

Step 5. The SEA obtains the number of poor children enrolled in private schools in the area each sending LEA serves, based on the State's alternative poverty data. If these data are unavailable, the SEA obtains the number of children enrolled in private schools in the area each sending LEA serves.

Step 6. The SEA multiples the number(s) from Step 5 by the proportions from each sending LEA of students who have and who have not moved to the newly created LEA (from Step 4). These calculations yield the estimated number of private school students who reside in the area served by the newly created LEA, and the estimated number of private school children who still reside in the area each sending LEA serves.

Step 7. The SEA multiplies the results from Step 6 by the State-equating factor from Step 2. The result is the estimated number of children ages 5-17 enrolled in private schools in each newly created and sending LEA who are from families with incomes below the poverty line.

Determining the Total Relative Number of Poor Children

Step 8. For each newly created LEA and sending LEA, the SEA adds the estimated number of public school children in poverty from Step 3 to the estimated number of private school children in poverty from Step 7.

Step 9. The SEA compares the results from Step 8 to the statewide total number of children in all LEAs from families with incomes below the poverty line. The resulting

proportions are the estimated relative number of children ages 5-17 from families with incomes below the poverty line in each newly created and sending LEA.

Calculating the Share of the *Title II, Part A* Hold-Harmless for Each Sending LEA and Newly Created LEA

Step 10. The SEA applies the relative weightings of these two proportions-20 percent for relative student enrollment and 80 percent for relative number of children in poverty-to determine the total amount of the hold-harmless attributable to Class Size Reduction for both the newly created LEA and each sending LEA.

Note: If the SEA does not have common, alternative poverty data for all LEAs in the State, it must determine the relative numbers of children ages 5-17 from families with incomes below the poverty line for each newly created LEA and sending LEA that affect it. The SEA would do this by modifying Steps 4-9 so that the data on both student enrollments and the numbers of poor children using alternative poverty data are based only on information from the newly created and sending LEAs, not from the whole State.

The SEA should not pursue alternative procedures when statewide alternative poverty data for all LEAs are available. Among other things, the income levels used for determining the number of poor children by alternative poverty data, such as free- and reduced-lunch subsidies, are much higher than income levels used for determining the number of children ages 5-17 from incomes below the poverty line. Therefore, calculating a State-equating factor based on a statewide average will be more reliable, district-by-district, than calculating an equating factor based on data from only a newly created LEA and the sending LEAs that affect it.

c. Determining the Total Hold-Harmless

The total hold-harmless of each newly created and sending LEA is calculated by adding the hold-harmless adjustments for the former Eisenhower and Class-Size Reduction programs.

2. Calculation of *Title II, Part A* Supplemental Funds

As discussed in E-1, 20 percent of the portion of any LEA's *Title II, Part A* allocation in excess of the hold-harmless is based on the LEA's population ages 5-17, and 80 percent is based on the LEA's population ages 5-17 from families with incomes below the poverty line, as taken from Census Bureau data for districts for which it provides data. The SEA calculates the supplemental portion of the newly created and sending LEA's *Title II, Part A* allocation in the same way that it does under the hold-harmless portion for the former Class-Size Reduction program.

E-6. If charter school-LEAs or other types of special LEAs without geographic boundaries are created, how should the SEA determine the amount of *Title II, Part A* funds that these newly created districts receive?

The Census Bureau does not collect poverty data for charter school-LEAs or other types of LEA without geographic boundaries (e.g., a regional vocational/technical school with LEA status). As in the case of LEAs with geographic boundaries (see E-5), for each of these "special LEAs" the SEA obtains a best estimate of the numbers of children ages 5-17 and children ages 5-17 from families with incomes below the poverty line for the special LEA and subtracts these counts from each sending LEA.

(With respect to charter schools, section 76.791(b) of EDGAR, which derives from the Charter School Expansion Act of 1998, Pub. L.105-278, specifically provides that "[f]or the year the charter school LEA opens or significantly expands its enrollment, the [SEA's] eligibility determination may not be based on enrollment or eligibility data from a prior year, even if the SEA makes eligibility determinations for other LEAs under the program based on such data.")

Because Census poverty data are not available for special LEAs, the SEA must derive an estimate of Census poverty children for each special LEA and determine from which LEAs these children came.

A. If the SEA has the information to track children transferring from sending LEAs to special LEAs:

The SEA uses the same process it used for newly created LEAs with geographic boundaries (see E-5) except that the proportions of student enrollment and students in poverty used to calculate the *Title II, Part A* allocations for those LEAs would *not* be adjusted to include students enrolled in private schools. Since each sending LEA retains responsibility for serving these students, it would continue to receive *Title II, Part A* funds for that purpose.

B. If the SEA does not have the information to track children transferring from sending LEAs to special LEAs:

The SEA may use the following method to determine the estimated number of children in each special LEA.

Step 1. The SEA identifies an alternative poverty factor, such as free and reduced price lunch, that is available for the entire State and for each special LEA.

Step 2. The SEA develops an equating factor for the State that represents the following proportion:

$$\frac{\text{Total number of Census poverty children in the State}}{\text{Total number of poverty children in the State using the alternative poverty factor}}$$

Step 3. The SEA multiplies the equating factor by the number of poverty children reported by the special LEA, as calculated using the alternative poverty factor, to obtain an estimate of the number of Census poverty children in the special LEA.

The SEA then uses the number from Step 3 to determine the special LEA's *Title II, Part A* allocation.

Note: If the SEA allocates funds to new or expanding charter schools based on estimated data (such as school enrollment) for which it later will have actual data, section 76.796 of EDGAR requires the SEA to subsequently adjust these allocations to reflect the actual data. Additional guidance regarding allocating ESEA program funds to new or expanding charter schools may be found in Department guidance available on the Internet at *http://www.ed.gov/policy/elsec/guid/cschools/cguidedec2000.doc*.

E-7. Can charter schools apply for *Title II, Part A* funds?

It depends. Those charter schools that are LEAs can apply to their SEA in the same manner as other LEAs. However, those charter schools that are *not* LEAs cannot apply to the SEA for these funds. They are treated like the other schools within their particular LEA, and teachers and other school staff may participate in program activities on the same basis as personnel in any other school.

E-8. What are the LEAs' reporting responsibilities?

Title II, Part A does not contain any specific LEA reporting or evaluation requirements. However, under *Title I, Part A* [Section 1119(b)(1)(A)], each LEA receiving *Title I* funds must publicly report annually on its progress, both at the district and school level, in meeting the State-established annual measurable objectives for ensuring that all teachers will be highly qualified no later than the end of the 2005-2006 school year. In addition, LEAs must report to the SEA information the SEA needs to meet its own reporting responsibilities.

E-9. What corrective steps must occur if an LEA fails to make adequate yearly progress (AYP) or fails to meet the annual measurable objectives for teacher quality?

Section 2141 of the statute describes what States and districts must do if an LEA fails to make AYP or meet its annual measurable objectives for teacher quality. If the SEA determines, based on LEA reports submitted under Section 1119(b), that an LEA failed to make progress toward meeting its annual measurable objectives for two consecutive years, the LEA must develop an improvement plan that will enable it to meet such objectives and that directly addresses the issues that prevented it from meeting its objectives. During the development and throughout implementation of the plan, the SEA

must provide technical assistance to the LEA and to schools served by the LEA that need assistance to enable them to meet the annual measurable objectives described in section 1119(a)(2).

If an LEA has failed to make AYP for three consecutive years under Section 1111(b)(2)(B) of *Title I, Part A*, and has failed for three years to make progress toward meeting its annual measurable objectives established under Section 1119(b)(1), the SEA must enter into an agreement with the LEA on its use of *Title II, Part A* funds under which the SEA will:

1. Develop (in conjunction with the LEA, teachers, and principals) professional development strategies and activities based on scientifically based research that the LEA will use to meet the State's annual measurable objectives for improving teacher quality;

2. Require the LEA to use these professional development strategies and activities; and

3. Prohibit LEAs from using *Title I, Part A* funds to fund any new paraprofessionals, except under certain limited instances.

E-10. How may the SEA distribute any unclaimed LEA funds?

Title II, Part A funds available for LEA use are considered unclaimed if or when one or more LEAs decide not to participate in the program, or agree that they cannot use all or a portion of the funds they receive. The SEA must distribute these funds to other LEAs, but it has the flexibility to determine how this redistribution will occur. It may, but is not required, to proportionally increase the subgrant amount provided to all participating LEAs. Alternately, an SEA could establish special procedural and distribution criteria (e.g., LEAs with high proportions of teachers who are not highly qualified and need additional professional development) and make these funds available to those LEAs that meet these criteria. However, an SEA may not reserve for itself any portion of these LEA funds to augment either its State Activities or its administrative funds.

Needs Assessment

E-11. What is the purpose of the LEA needs assessment and how does the LEA use it?

The purpose of the needs assessment is to determine the needs of the LEA's teaching force in order to be able to have all students meet challenging State content and academic achievement standards. An LEA may want to use information such as student achievement data, information about numbers of teachers (disaggregated by subject taught and grade level) who lack full teacher certification or licensure, assessments by administrators and mentor teachers who evaluate teacher and student performance, and teacher self-evaluations.

The LEA uses the needs assessment to identify local teacher quality needs. Among other things, the assessment should identify those needs that must be addressed if the LEA is to

have all teachers highly qualified by the end of the 2005-2006 school year. The assessment should take into account:

1. The activities that the LEA must conduct in order to give teachers the means to provide all students with the opportunity to meet challenging State content and academic achievement standards; and

2. The activities that the LEA needs to conduct in order to give principals the instructional leadership skills to help teachers provide all students with the opportunity to meet challenging State content and academic achievement standards [Section 2122(c)(2)].

A needs assessment also identifies those areas that an LEA should strengthen, such as areas of weakness in student academic achievement, as part of a meaningful plan for professional development and hiring. The LEA uses the results of this assessment to plan its *Title II, Part A* activities, keeping in mind its student achievement goals and its plan for ensuring that all teachers in core academic areas meet the "highly qualified" requirements by the end of 2005-06 school year.

E-12. Who must be involved in the needs assessment process?

The LEA must carry out the needs assessment with the involvement of the district's teachers, including those in schools receiving assistance under the *Title I, Part A* program.

E-13. What data should the LEA use when conducting a needs assessment?

The law provides that the LEA's needs assessment "shall take into account the activities that need to be conducted in order to give teachers the means, including subject-matter knowledge and teaching skills, and to give principals the instructional leadership skills to help teachers to provide students with the opportunity to meet challenging State and local student academic achievement standards" [Section 2122(c)(2)]. However, the law does not prescribe the data an LEA must use in conducting its needs assessment.

The data necessary for determining teacher needs might include information such as: student achievement data, information on national and State initiatives, projections of the professional development necessary to ensure that all teachers of core academic subjects meet the highly qualified requirements in Section 9101(23), scientifically based research on proposed programs and strategies, projections of teacher supply in critical areas, student enrollment data, program assessment data, and community and business input.

E-14. After conducting its needs assessment, must the LEA target its use of *Title II, Part A* funds?

Yes. The LEA must target funds to schools that (1) have the lowest proportion of highly qualified teachers, (2) have the largest average class size, or (3) are identified for school improvement under Section 1116(b) of *Title I, Part A* [Section 2122 (b)(3)].

In addition, in considering its best use of *Title II, Part A* funds, an LEA should consider whether to target *Title II, Part A* funds to help it meet its responsibilities under *Title I*. These include providing assurances that the LEA will: (1) work in consultation with schools as the schools develop and implement their plans or activities under Section 1119 [Section 1112(c)(1)(H)]; (2) comply with the requirements of Section 1119 regarding the qualifications of teachers and paraprofessionals and professional development [Section 1112(c)(1)(I)]; and (3) ensure, through incentives for voluntary transfers, professional development, recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers [Section 1112(c)(1)(L)].

E-15. If a need is mentioned in the LEA needs assessment, must it be addressed in the district plan?

No. The LEA's needs assessment focuses on "local needs for professional development and hiring as identified by the LEA and school staff." The local assessment is likely to reflect a wide array of needs, not all of which the LEA may be able to address with limited fiscal and non-fiscal resources. Rather than try to address all of these identified needs, consistent with the content requirements for local applications in Section 2122(b), the district must plan its uses of *Title II, Part A* funds in those ways most likely to produce positive results in teaching practice and the achievement of all of the district's students.

E-16. Must staff at individual schools be involved in developing an LEA's needs assessment?

Yes. The law states that the needs assessment must reflect the needs for professional development "as identified by the [LEA] and school staff," and requires the LEA to conduct its needs assessment "with the involvement of teachers, including teachers participating in programs under part A of Title I" [Section 2122(c)(1) and (2)]. Therefore, the LEA needs to involve teachers at individual schools in the needs assessment process. How it does so (e.g., through surveys, focus groups, and other means of collecting data) is left to the LEA and its staff to decide.

E-17. Should an LEA needs assessment examine strategies for eliminating the achievement gap that separates low-income and minority students from other students?

Yes. Since the law requires each LEA to develop a strategy for closing this achievement gap [Section 2122(b)(2)], the LEA presumably will want to use the needs assessment process to engage teachers, principals, and other staff in identifying key professional development and hiring needs in this critical area.

E-18. How can the SEA ensure that those activities an LEA proposes to implement with *Title II, Part A* funds are, in fact, consistent with the required local needs assessment?

If an LEA submits a program-specific application under Section 2122, the alignment of the proposed activities with the needs identified in the needs assessment should be evident from the content of the application itself. An LEA's program-specific application must contain a description of the results of its needs assessment [Section 2122(b)(8) and (c)]. The remainder of the application contains information on how the LEA's use of *Title II, Part A* funds will meet its identified needs. For example, the application must include a description of the professional development activities to be carried out with *Title II, Part A* funds, how these activities will have a substantial, measurable, and positive impact on student academic achievement, and how the activities will be used as part of a broader strategy to eliminate the achievement gap that separates low-income and minority students from other students [Section 2122((b)(2)].

If, instead, an LEA receives funding on the basis of a consolidated local plan or application, the SEA has flexibility, in consultation with the LEAs and the State's governor, to adopt any application content requirements it wants provided these criteria relate to the objectives of the consolidated plan or application. For example, requirements may include improvement of teaching and learning through greater coordination of the Federal programs and their integration into State and local-funded activities. Hence, the SEA is free to tailor the application in any reasonable way to ensure that Federal funds are supporting teacher-training activities that flow from the local needs assessment. In addition, SEAs are strongly encouraged to implement monitoring procedures to ensure that district *Title II, Part A* funds are being used consistent with the findings of the local needs assessment.

F. LOCAL USE OF FUNDS

While State (and Federal) leadership is important, LEA officials play the most immediate and critical role in promoting the effective teaching that is needed to facilitate increased academic achievement of all students. Their schools, after all, are where teaching and learning occur. LEA officials can exercise needed leadership in such key ways as:

1. Ensuring that the LEA conducts an effective assessment of the district's needs for professional development and hiring, through meaningful consultation with teachers of all grades and subject areas, particularly teachers in high-need schools, and others;

2. Ensuring that the results of this needs assessment drive the development of sound multi-year program plans that (a) include teacher mentoring and incentives, as well as provision of professional development in subject-matter content and effective instructional strategies (i.e., those that are likely to have a positive impact on student achievement) that are based on a review of scientifically based research, and (b) focus particular attention on addressing the needs of students who are at highest risk of failing to meet the State's academic standards;

3. Incorporating objective benchmarks for success and clear statements of desired outcomes into the LEA's multiyear plan;

4. Continuously examining standards, assessments, curricula, and teaching practices to ensure that they fit together;

5. Instituting merit pay programs, tenure reform, financial incentives, special mentoring help, and other means to: (a) make teaching in the district attractive to mid-career professionals and others with special knowledge, skills, and enthusiasm, and (b) encourage the district's most effective teachers not only to stay in the district, but to teach in its highest-need schools;

6. Instilling a strong commitment to professionalism among teachers, principals, and other school and district staff and actively promoting the importance of strong school leaders; and

7. Creating a strong community expectation that the students and their schools can succeed, and a strong expectation among all school and district staff that all teachers will have the subject-matter knowledge and teaching skills they need to enable each of their students to succeed.

Allowable Costs

F-1. For what activities may an LEA use *Title II, Part A* funds?

Consistent with local planning requirements and its needs assessment, the *Title II, Part A* program offers an LEA the flexibility to design and implement a wide variety of activities that can promote a teaching staff that is highly qualified and able to help all students -- regardless of individual learning needs -- achieve challenging State content and academic achievement standards. Funds can also be used to provide school principals with the knowledge and skills necessary to lead their schools' efforts in increasing student academic achievement. For example, the statute specifically authorizes the following types of activities:

1. Developing and implementing mechanisms to assist schools to effectively recruit and retain highly qualified teachers, principals, and specialists in core academic areas (and other pupil services personnel in special circumstances, as noted in question F-6 of this document).

2. Developing and implementing strategies and activities to recruit, hire, and retain highly qualified teachers and principals. These strategies may include (a) providing monetary incentives such as scholarships, signing bonuses, or differential pay for teachers in academic subjects or schools in which the LEA has shortages; (b) reducing class size; (c) recruiting teachers to teach special needs children, including students with disabilities, and (d) recruiting qualified paraprofessionals and teachers from populations underrepresented in the teaching profession, and providing those paraprofessionals with alternate routes to obtaining teacher certification.

3. Providing professional development activities that improve the knowledge of teachers and principals and, in appropriate cases, paraprofessionals, in:

    a. Content knowledge. Providing training in one or more of the core academic subjects that the teachers teach; and

    b. Classroom practices. Providing training to improve teaching practices and student academic achievement through (a) effective instructional strategies, methods, and skills, and (b) the use of challenging State academic content standards and student academic achievement standards in preparing students for the State assessments.

4. Providing professional development activities that improve the knowledge of teachers and principals and, in appropriate cases, paraprofessionals, regarding effective instructional practices that:

    a. Involve collaborative groups of teachers and administrators;

    b. Address the needs of students with different learning styles, particularly students with disabilities, students with special needs (including students who are gifted and talented), and students with limited English proficiency;

    c. Provide training in improving student behavior in the classroom and identifying early and appropriate interventions to help students with special needs;

    d. Provide training to enable teachers and principals to involve parents in their children's education, especially parents of limited English proficient and immigrant children; and

    e. Provide training on how to use data and assessments to improve classroom practice and student learning.

5. Developing and implementing initiatives to promote retention of highly qualified teachers and principals, particularly in schools with a high percentage of low-achieving students, including programs that provide teacher mentoring from exemplary teachers and administrators, induction, and support for new teachers and principals during their first three years; and financial incentives to retain teachers and principals with a record of helping students to achieve academic success.

6. Carrying out programs and activities that are designed to improve the quality of the teaching force, such as innovative professional development programs that focus on technology literacy, tenure reform, testing teachers in the academic subject in which teachers teach, and merit pay programs.

7. Carrying out professional development programs that are designed to improve the quality of principals and superintendents, including the development and support of academies to help them become outstanding managers and educational leaders.

8. Hiring highly qualified teachers, including teachers who become highly qualified through State and local alternate routes to certification, and special education teachers, in order to reduce class size, particularly in the early grades.

9. Carrying out teacher advancement initiatives that promote professional growth and emphasize multiple career paths (such as paths to becoming a mentor teacher, career teacher, or exemplary teacher) and pay differentiation.

F-2. What amount of program funds may an LEA reserve for administrative and indirect costs?

The statute is silent on the amount of program funds an LEA may spend for administrative costs. Therefore, the amount of funds that an LEA may spend for this category of expenses is subject to requirements in the cost principles in the Office of Management and Budget (OMB) Circular A-87 -- including the principle that, among other things, all costs must be necessary, reasonable, and allocable to the program. To access the relevant information in OMB Circular A-87, visit http://www.whitehouse.gov/omb/circulars/a087/a87_2004.html.

In addition, because LEA expenditures are subject to "supplement not supplant" provisions, by virtue of Section 76.563 of EDGAR an LEA's indirect costs are limited to its approved "restricted indirect cost rate."[2]

[2] Like an LEA, the SEA and the SAHE (though not the partnership grants awarded by the SAHE) also must use program funds only in ways that supplement, but do not supplant, non-Federal funds that otherwise would be used for authorized activities. Therefore, the funds that the SEA and the SAHE reserve for administration and planning, and the funds reserved by the SEA for State-level activities, are subject not only to the same OMB cost principles, but also to the SEAs and SAHEs approved restricted indirect cost rates [Section 2113(f)].

F-3. May an LEA use *Title II, Part A* funds to: (a) pay the costs of State tests required of new teachers to determine whether they have subject-matter competence, and (b) assist them in meeting State certification requirements?

Yes. An LEA may use *Title II, Part A* funds to develop and administer rigorous State tests required of teachers new to the profession (and available to teachers not new to the profession) to determine whether they have subject-matter competence, and to assist them in meeting State certification requirements, e.g., by paying for the costs of additional required courses.

F-4. When can *Title II, Part A* funds be used to pay teacher salaries?

Title II, Part A funds can be used only to pay the salaries of highly qualified teachers hired for the purpose of reducing class size.

Title II, Part A funds can also, as part of an overall strategy to improve teacher quality, be used for teacher incentives (e.g., as stipends for teachers recruited to fill hard-to-fill positions or to retain teachers who have been effective in helping low-achieving students succeed) or to pay the salaries of master teachers who provide or coordinate professional development services for other teachers.

In addition, as reasonable and necessary, *Title II, Part A* funds may be used to pay for substitute teachers if, and only if, (a) those regular classroom teachers they are replacing were hired with *Title II, Part A* funds to reduce class size, or (b) the teachers are participating in *Title II*-funded "programs and activities that are designed to improve the quality of the teacher force, such as…innovative professional development programs…" [Section 2123(a)(5)(A)]. LEAs also must ensure that the hiring of these substitutes supplements, and does not supplant, the use of local and State funds they would otherwise be spending for such substitutes.

F-5. May an LEA use *Title II, Part A* funds to pay out-of-area recruitment costs and moving expenses that may be needed in order to recruit and relocate new teachers?

Yes. There are circumstances in which the use of *Title II, Part A* funds to pay out-of-area travel and relocation costs would be reasonable and necessary to recruit individuals that the LEA would want to hire to meet its teacher shortage needs. To the extent that out-of-area recruitment itself is reasonable and necessary, relocation costs may be paid as a stipend or other financial incentive if, as with any cost the program would assume, the incentives are reasonable and necessary.

F-6. When may an LEA use *Title II, Part A* funds for programs to recruit and retain pupil services personnel (e.g., guidance counselors)?

An LEA may use *Title II, Part A* funds for these activities, but only if the LEA is making progress toward meeting the annual measurable objectives described in *Title I*, Section 1119(a)(2) of ESEA, and in a manner consistent with mechanisms to assist schools in effectively recruiting and retaining highly qualified teachers and principals.

F-7. May an LEA use program funds to provide increased opportunities for minorities, individuals with disabilities, and other individuals underrepresented in the teaching profession?

Yes. Funds may be used to pay reasonable and necessary expenses to recruit these teachers and paraprofessionals, and can be used to assist them in obtaining certification through alternate route programs.

F-8. May an LEA use *Title II, Part A* funds to assist paraprofessionals to become highly qualified and meet the requirements for *Title I* paraprofessionals in Section 1119 of ESEA?

Yes, but only if the training or support given to the paraprofessionals is consistent with the allowable activities under *Title II. Part A*. To the extent that helping paraprofessionals meet the required qualifications is consistent with the professional development goals listed below, then *Title II, Part A* funds may be used for that purpose.

The law allows LEAs to use these funds to provide professional development activities "that improve the knowledge of teachers and principals, and, in appropriate cases, paraprofessionals" concerning:

- One or more core academic subjects that teachers teach [Section 2123(a)(3)(A)(i)];
- Effective instructional strategies, methods, and skills, and use of challenging content and academic achievement standards and State assessments to improve teaching practices and student academic achievement [Section 2123(a)(3)(A)(ii)];
- Training in how to teach and address the needs of students with different learning styles, particularly students with disabilities, students with special learning needs (including students who are gifted and talented), and students with limited English proficiency [Section 2123(a)(3)(B)(ii)];
- Training in methods of improving student behavior in the classroom and identifying early and appropriate interventions to help special-needs children learn [Section 2123(a)(3)(B)(iii)];
- Training in how to understand and use data and assessments to improve classroom practice and student learning [Section 2123(a)(3)(B)(v)].

LEAs also may use their *Title I* funds "to support ongoing training and professional development to assist teachers and paraprofessionals" in order to meet the teacher quality

and paraprofessional requirements of Section 1119(h). Provided that an LEA maintains records of the amount of *Title I* and *Title II, Part A* funds used for these professional development activities, and the *Title I* funds are used as permitted in the *Title I* statute and regulations, *Title I* and *Title II, Part A* funds may be used jointly for this purpose.

Funding for training of paraprofessionals is also available under *Title VII*, *Part A, Subpart 1*, Indian Education Formula Grants to LEAs program [Section 7114(b)(5)].

F-9. May LEAs use *Title II, Part A* funds to provide training to enhance the involvement of parents in their child's education?

Yes, LEAs may use program funds to provide training to enhance the involvement of parents in their child's education.

Parental involvement is best encouraged through regular, two-way, and meaningful communications about student learning and other school activities. Effective strategies may include (1) promoting the understanding that parents are true partners in their children's education and communicating the need for parents to help their children succeed in school, and (2) providing parents with specific suggestions, on an ongoing basis, about ways to encourage learning at home and ways to be actively involved in their child's education at school.

F-10. May LEAs use *Title II, Part A* funds to purchase supplies or instructional materials that are used as part of professional development activities?

Yes, but only if the expenditures, like any costs paid for by Federal program funds, are reasonable and necessary to carry out these activities. *Title II, Part A* funds may be used to purchase materials and supplies used in professional development activities, including the materials (such as graphing calculators) that a teacher will need in order to apply the professional development in a classroom setting. However, *Title II, Part A* does not permit the use of program funds to purchase materials and supplies (e.g., graphing calculators) that, although they may benefit students, are not directly connected to the teachers' professional development. Other ESEA funds, most notably *Title V, Part A* funds, may be used to purchase instructional materials or technology for students if the purchases are part of an "innovative assistance program" as this term is used in *Title V*.

F-11. Are LEAs required to spend a portion of their allocation on math and science activities?

No, but there are widespread shortages of highly qualified mathematics and science teachers, particularly in middle schools and in high-poverty urban and rural areas. Therefore, in preparing their needs assessments, LEAs are strongly encouraged to look closely at their needs for recruiting, training, and retaining high-quality mathematics and science teachers, particularly in light of their students' academic achievement in math and science.

Maintenance of Effort

F-12. Do maintenance of effort requirements apply to the *Title II, Part A* program?

Yes. LEAs are required to maintain fiscal effort in order to receive their full allocation of *Title II, Part A* funds for any fiscal year. An LEA has maintained effort when either the combined fiscal effort per student, or the aggregate expenditures of the LEA and 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 or aggregate expenditures for the second preceding fiscal year. "Preceding fiscal year" means either 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.

Both State and local expenditures for free public education within the State must be considered in determining whether a State has maintained effort under *Title II, Part A*. "Aggregate expenditures for free public education" includes expenditures such as those for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food service and student body activities. States may include in the maintenance of effort calculation expenditures of Federal funds for which no accountability to the Federal government is required. (Note: there are no accountability requirements for some Impact Aid program funds; however, certain Impact Aid funds, such as those received for children with disabilities, do have accountability provisions.)

States must be consistent in the manner in which they calculate maintenance of effort from year to year in order to ensure that the annual comparisons are on the same basis (e.g., calculations must from year to year consistently either include or exclude expenditures of Federal funds for which accountability to the Federal government is not required). Moreover, States that choose to include expenditures of Federal funds for which accountability to the Federal government is not required must do so with the understanding that future years' maintenance of effort calculations may be affected by fluctuating Federal appropriations over which neither the Department, nor a State, has any control.

Finally, expenditures not to be considered in determining maintenance of effort are those for community services, capital outlay, debt service, or any expenditures of Federal funds for which accountability to the Federal government is required.

F-13. What happens if the LEA fails to meet the requirements for maintenance of effort?

If the LEA fails to meet the requirements for maintenance of effort, the SEA reduces the LEA's allocation of *Title II, Part A* funds in any fiscal year in the exact proportion by which an LEA fails to meet the 90 percent test mentioned in the preceding answer, using the measure most favorable to the LEA.

Supplement not Supplant

F-14. Does *Title II, Part A* have a supplement not supplant requirement?

Yes. Sections 2123(b) (for LEAs) and 2113(f) (for the SEA and SAHE) provide that *Title II, Part A* funds must be used to supplement, and not supplant, any non-Federal funds that would otherwise be used for authorized *Title II, Part A* activities.

F-15. May *Title II, Part A* funds be used for State-mandated activities?

The ability of an SEA or LEA to use *Title II, Part A* funds to carry out activities mandated by a State depends upon whether non-Federal funds are available to carry out those activities. Presumably, in the absence of *Title II, Part A* funds, the SEA or LEA would use State or local funds to implement any laws enacted by the State legislature or rules mandated by the State Board of Education or the SEA. If that is the case, using *Title II, Part A* funds for those activities would violate the non-supplanting requirement, because the SEA or LEA would be using Federal funds for activities that it would otherwise support with other funds.

However, in certain instances, an SEA or LEA may be able to overcome the presumption that supplanting will result if *Title II, Part A* funds are used for a State-mandated program or activity. In order to make such a case, the SEA or LEA should have available written documentation (e.g., budget information, planning documents, or other materials) demonstrating that it would not be able to meet State mandates without the use of *Title II, Part A* funds. An agency must be able to reasonably document that the activities funded under *Title II, Part A* are, in fact, supplemental, even though some of them are mandated by the State.

In general, an SEA or LEA must determine what educational activities it would support if no *Title II, Part A* funds were available. If it is clear that no State or local funds remain available to fund certain activities that previously were funded with State or local resources, then the SEA or LEA may be able to use *Title II, Part A* funds for those activities. In no event, however, may an SEA or LEA decrease State or local funds for particular activities simply because *Title II, Part A* funds are available.

Class-Size Reduction

F-16. What are some ways in which LEAs may use highly qualified teachers hired with *Title II, Part A* funds to reduce class size?

LEAs may reduce class sizes by creating additional classes in a particular grade or subject and placing highly qualified teachers hired with program funds in those classes. However, because of space constraints and other concerns, this is not always feasible. There are other methods of reducing class size that are effective in assisting students in increasing their level of achievement. For instance, the benefits of smaller class size can be provided by the creation of smaller instructional groups served by highly qualified teachers for sustained blocks of time on a regular basis. Some examples of how LEAs might use this approach to reduce class size include but are not limited to:

1. Having two highly qualified teachers team teach in a single classroom for either part of the school day or the entire day.

2. Hiring an additional highly qualified teacher for a grade level (e.g., providing three teachers for two 3rd grade classes) and dividing the students among the teachers for sustained periods of instruction each day in core academic subjects, such as reading and math.

3. Hiring an additional highly qualified teacher who works with half the students in a class for reading or math instruction, while the other half remains with the regular classroom teacher.

LEAs have the flexibility to explore these and other alternatives for reducing class sizes, provided that highly qualified teachers are used. Generally, the manner in which LEAs reduce class size should result in a meaningful reduction for all of the students in the class on a regular basis. Research shows that "pull-out" programs involving reducing class size by only a handful of students, or sporadic reduction of class size, are less likely than other methods of class-size reduction to result in increased achievement for students.

G. FEDERAL AWARDS TO THE STATE AGENCY FOR HIGHER EDUCATION

The State agencies for higher education (SAHEs) develop criteria for awarding subgrants to eligible partnerships comprised of at least (1) one institution of higher education (IHE), including its division that prepares teachers and principals, (2) one school of arts and sciences, and (3) one high-need LEA. The partnerships use the funds to conduct professional development activities in core academic subjects to ensure that teachers, highly qualified paraprofessionals, and (if appropriate) principals have subject-matter knowledge in the academic subjects they teach, including computer-related technology to enhance instruction. SAHEs should demonstrate leadership in identifying for grantees and prospective applicants scientifically based professional development that is effective in increasing student academic achievement. The thrust of SAHE partnerships should be the implementation of strategies based upon this body of research.

A SAHE may also exercise leadership by:

- Conditioning a partnership's receipt of a subgrant on its submission of specific information to confirm that the school of education (or entity that administers the IHE's teacher preparation program) and the school of arts and sciences will embed the professional development into the curriculum the teacher preparation program offers.

- Requiring partnerships applying for subgrants to offer a work plan and commitment of IHE funds (or provide a competitive preference to those that do) for improving specific aspects of the teacher preparation program. For example, subgrantees could ensure that teaching candidates demonstrate content knowledge of the subject(s) they intend to teach, as well as show how such content knowledge supports the State's academic content standards.

G-1. Does the Department make separate grant awards to SAHEs?

Yes. ED issues two awards for the *Title II, Part A* State allocations, one to the SEA and one to the SAHE. The SEA award includes funds for State activities and administration and LEA subgrants; the SAHE award includes funds for eligible partnerships and SAHE administration.

G-2. How is the amount of funds a SAHE receives for competitive grant awards to partnerships and for administration of the program determined?

After one percent of the State's allocation is set aside for SEA and SAHE administration and planning, the SAHE receives an award for competitive grants that is 2.5 percent of the State's remaining allocation. The SAHE's portion of the one percent administrative set-aside is, absent an agreement with the SEA to the contrary, the greater of (1) the amount of FY 2001 funds it received for administration under the former Eisenhower programs, or (2) five percent of the funds available each year for competitive subgrants.

Competitive Process

G-3. How does the SAHE administer the competitive portion of the *Title II, Part A* program?

The SAHE administers its portion of *Title II, Part A* funds by working in conjunction with the SEA to identify priorities and criteria for funding competitive applications, publishing an application package that describes the rules and requirements of the competition, managing the competition and peer review process used to select grantees, disbursing funds to grantees, and monitoring and providing technical assistance to help ensure the success of the partnership grants. The SAHE's priorities are guided by the "State plan," developed under Section 2112 of the ESEA, which identifies Statewide professional development needs and priorities for developing, supporting, and retaining a high-quality teaching force (also see G-8).

G-4. Who is eligible to receive a competitive award from the SAHE?

Eligibility is limited to partnerships comprised at a minimum of: (1) a private or State IHE and the division of the institution that prepares teachers and principals; (2) a school of arts and sciences; and (3) a high-need LEA (see G-5 below). [Note: for purposes of this Guidance, the statutorily required partners will be referred to as "principal partners."] An eligible partnership also may include another LEA, a public charter school, an elementary school or secondary school, an educational service agency, a nonprofit educational organization, another IHE, a school of arts and sciences within that IHE, the division of that IHE that prepares teachers and principals, a nonprofit cultural organization, an entity carrying out a pre-kindergarten program, a teacher organization, a principal organization, or a business.

G-5. What is a high-need LEA?

A high-need LEA is defined as an LEA:

(A) (i) that serves not fewer than 10,000 children from families with incomes below the poverty line; **or**
(ii) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; **and**

(B) (i) for which there is a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach; **or**
(ii) for which there is a high percentage of teachers with emergency, provisional, or temporary certification or licensing [Section 2102(3)].

G-6. How can an SEA or LEA determine whether an LEA meets the poverty criterion in the definition of a high-need LEA?

The Department has determined that the only uniform and consistent data that reflect the number or percentage of children served by the agency from families with incomes below the poverty line, a term which is defined in section 9101(33) of the ESEA, are data periodically collected and reported by the U.S. Census Bureau. The Census Bureau's poverty data reflect an estimate of the number of these children for nearly every school district in the United States that has geographic boundaries. As of June 2005, the Census Bureau's most current poverty data may be found on its website at: http://www.census.gov/hhes/www/saipe/school/sd02ftpdoc.html. These data were collected in 2002. The Census Bureau generally updates this data every two years.

LEAs with geographic boundaries should use the most current Census Bureau poverty data to determine which LEAs meet the definition of a high-need LEA.

Because of the lag time between its collection and the reporting of poverty data, the Census Bureau does not report poverty data for newly created LEAs. It also neither collects nor reports poverty data for charter schools that operate as LEAs and other LEAs that do not serve a distinct geographic area. For newly created districts, the SAHE may

use the procedures discussed in question E-5 to determine their poverty rate. To determine the poverty rate of charter school-LEAs or other LEAs without a geographic service area, the SAHE may use the calculation method discussed in question E-6. In either case, if this number is at least 20 percent, the LEA satisfies the poverty criterion of the definition of a high-need LEA.

Once established as a high-need-LEA partner in a SAHE subgrant, the LEA may continue to be considered a high-need LEA for the duration of the project without regard to subsequent changes in the LEA's reported poverty rate.

G-7. If a SAHE finds that the use of Census Bureau data to determine the numbers or percentages of children from families with incomes below the poverty line generates only a very small number of LEAs that meet the definition of "high-need," may other methods be used to determine which districts qualify as a high-need LEA?

No. Census Bureau data reflect the only available information that is consistent with the statutory requirement that districts eligible as high-need LEAs have the requisite percentage or number of children from families with incomes below the poverty line. However, a SAHE-funded partnership that includes the required IHE and at least one high-need LEA may also include other LEAs, whether or not they are high-need LEAs under the statutory definition.

Alternative methods for defining a high-need LEA may be employed only if it is literally impossible to award subgrants to projects with at least one partner that is a high-need LEA that meets the statutory definition. The determination that no LEA is legally eligible and the development of alternative procedures for defining a high-need LEA should be made in consultation with the Department.

G-8. How does the SAHE determine its priorities for soliciting subgrant applications?

A SAHE determines priorities for the *Title II, Part A* subgrant competition and awards based on a review of the State plan developed under ESEA Section 2112, as well as discussions with the SEA [Section 2132(a)]. These discussions presumably will center on how the SAHE can support projects that will have the greatest impact on helping LEAs - and particularly high-need LEAs - ensure that all teachers are highly qualified and have the knowledge and teaching skills they need to help all students achieve to high standards.

A SAHE may solicit applications that respond to defined areas of need, such as professional development for mathematics or science. In designing its competitive subgrant procedures, consistent with State law the SAHE also can propose to give additional weight to those applications that address the stated funding priorities, or reject any applications that do not address particular areas of focus. Provided that all information is available to each potential applicant, the SAHE may want to provide technical assistance to prospective applicants in developing applications that address these needs. This assistance might take the form of workshops, review of pre-proposal

submissions, information on effective models, and clarification of assessment and anticipated outcomes for projects.

G-9. Does the SAHE competition for IHE-LEA partnerships need to ensure that services are offered on an equitable basis to public and private school teachers?

Yes, as required by Section 9501, which describes the applicable requirements for equitable services for private school students and teachers under *Title II, Part A*.

G-10. Are there any Federal requirements that govern how SAHEs must conduct the competition?

The statute requires the State to award subgrants that are equitably distributed by geographic area within a State, and to ensure that eligible partnerships in all geographic areas within the State are served through the subgrants [Section 2132(a)]. Otherwise, State law generally determines the procedures for announcing and publicizing the competition and for reviewing and awarding program funds [Sections 76.770 and 76.400(c) of EDGAR].

Eligible Partnerships

G-11. Section 2132(b) requires the SAHE to ensure that its subgrants are either "equitably distributed by geographic area within a State" or that "eligible partnerships in all geographic areas within the State are served through the subgrants." What do these phrases mean?

The meaning of these phrases is left to reasonable SAHE interpretation.

G-12. Does the definition of an "eligible partnership" permit a community college to be part of a partnership that is eligible to receive a *Title II, Part A* subgrant?

Yes, but it may be considered as one of the statutorily required principal partners only if the community college has a division that prepares teachers and principals [Section 2131(1)]. The community college may be the subgrantee (i.e., fiscal agent) if allowed by the rules and procedures of the subgrant competition. In any case, a community college may be an additional, non-principal member of any partnership.

G-13. May a regional educational service agency, intermediate educational unit, or similar public agency participate in a partnership as a high-need LEA?

In general, no. These agencies may be considered LEAs, as the term is defined in Section 9101(26), because they are public authorities "legally constituted within a State for either administrative control, or direction of, or to perform a service for, public [schools] in a city, county, township, school district, or other political subdivision of a state, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public schools." However, these agencies will rarely be "high-need" LEAs within the meaning of Section 2102(3) as they are unlikely to have a

high percentage of out-of-field teachers or those who hold emergency, provisional, or temporary certification.

G-14. May teachers or principals in low-performing schools that are not located in a high-need LEA participate in a SAHE project?

Yes. As long as a high-need LEA is a principal partner, low-performing schools in districts that do not meet the definition of "high need" may be additional partners [Section 2131(1)(B)], and their teachers and principals may participate in the project.

G-15. Does the law require partnerships that receive subgrants from *Title II, Part A* and another program to coordinate activities conducted under the two awards?

The law requires any partnership receiving both a subgrant from a SAHE and an award under the Partnership Program for improving teacher preparation authorized in Section 203 of *Title II* of the Higher Education Act (HEA) to coordinate activities under the two awards.

Activities

G-16. What activities may a SAHE fund with its share of *Title II, Part A* funds?

Consistent with the priorities and criteria it has announced for selection of grant recipients, a SAHE makes awards of *Title II, Part A* funds to support one or more of the following types of activities to enhance student achievement in LEAs and schools participating in the partnerships:

- Professional development activities in core academic subjects to ensure that:
  - teachers, highly qualified paraprofessionals (as defined in Section 1119), and, if appropriate, principals have subject-matter knowledge in the academic subjects that the teachers teach (including knowledge of computer-related technology to enhance student learning); and
  - principals have the instructional leadership skills to help them work most effectively with teachers to help students master core academic subjects.

- Development and provision of assistance to LEAs and to their teachers, highly qualified paraprofessionals, or school principals, in providing sustained, high-quality professional development activities that:
  - ensure that those individuals can use challenging State academic content standards, student academic achievement standards, and State assessments to improve instructional practices and student academic achievement;
  - may include intensive programs designed to prepare individuals who will return to a school to provide instruction related to the professional development described in the preceding paragraph to others in their schools; and
  - may include activities of partnerships between one or more LEAs, one or more of the LEAs' schools, and one or more IHEs for the purpose of improving teaching and learning at low-performing schools.

G-17. What is an "institution of higher education" for the purposes of the SAHE program?

The Higher Education Act [HEA, Section 101(a)] defines an "institution of higher education" as an educational institution in any State that:

- Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
- Is legally authorized within such State to provide a program of education beyond secondary education;
- Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
- Is a public or other nonprofit institution; and
- Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is a satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Title IX, Section 9101(24) adopts this definition for ESEA programs, including the SAHE program in *Title II, Part A*.

G-18. May a SAHE grant support pre-service teacher training?

Yes. According to section 2134 of the statute, SAHE-funded partnerships may use Title II, Part A funds to provide highly qualified paraprofessionals with professional development (see G-16 for the types of professional development allowable under the statute) in core academic subjects, including pre-service training that can lead to a B.A. degree or teacher certification.

Administration

G-19. What kinds of costs may a SAHE pay with its administration and planning funds?

The SAHE may use funds to pay the costs it incurs related to such activities as helping to conduct an assessment of State needs for the overall State plan, designing the application package, paneling those who will review grant applications, and administering, monitoring, and providing technical assistance to, and evaluation of, SAHE-funded projects. As appropriate, these services may be provided through contracts with public or private agencies, provided that the SAHE retains overall responsibility for the administration of these projects.

G-20. If a portion of the SAHE's administrative funds is not needed, can the SAHE fund additional partnership grants or must the funds be returned to the SEA?

The funds a SAHE has available for administration are part of the one percent available to the State to pay for the administration of both the SEA and SAHE components of the *Title II, Part A* program. If the SAHE does not need its entire administrative portion, the remaining funds must be provided to the SEA if the SEA uses these funds for its costs of administration and planning. This transfer would not affect the 2.5 percent of the State's allocation (after one percent of the allocation is reserved for SEA and SAHE administration) the SAHE receives to fund partnership grants.

G-21. Must members of the partnership receiving a SAHE subgrant use a "restricted indirect cost rate" in calculating the maximum amount of indirect costs that may be charged to their awards?

No. The *Title II, Part A* program does not require these partnerships to use program funds only to supplement and not supplant non-Federal funds that otherwise would be used for funded activities. Because the restricted indirect cost rate (see EDGAR Section 76.563) applies only where a "supplement not supplant" requirement is in effect, partnership members may apply a larger, unrestricted indirect cost rate. (On the other hand, the SAHE itself, as well as the SEA, must use the restricted indirect cost rate because Section 2113(f) of the ESEA provides that a supplement, not supplant requirement applies to funds that they receive.)

G-22. In establishing application selection criteria or funding priorities, may the SAHE preclude members of the partnership from charging any indirect costs to the subgrant?

No. EDGAR and applicable Office of Management and Budget (OMB) cost principles permit grant recipients to charge indirect costs to their grants. However, should it desire to limit the amount of funds that members of a partnership may charge to indirect costs in order to have more project funds to pay for direct services, a SAHE may (1) adopt selection criteria that focus on an IHE's willingness (or that of any other partner) to reduce the indirect costs that it otherwise might claim, or (2) by rule (pursuant to State law), limit the amount of its indirect costs or the indirect cost rate to a reasonable amount.

G-23. May the SAHE establish, as a selection criterion to be used in reviewing subgrant applications, the willingness of the partnership members to limit the amount of their administrative costs?

Yes. As with the case of limiting charges for a partner's indirect costs, the SAHE may establish selection criteria that give preference to applicants that agree to charge lower levels of administrative costs. Moreover, as with every other aspect of the IHE's proposed use of funds, the SAHE should, when it negotiates budgets with prospective subgrantees, ensure that administrative costs are reasonable and necessary for the proper implementation of the grant.

G-24. Is there a maximum project period for SAHE grants?

No, although the project period cannot be longer than the period for which the ESEA is currently authorized. Moreover, project periods, which are established by the SAHE when it awards subgrants, may vary depending on the kind of activity a subgrant award is funding. Eligible partnerships must obligate funds before the end of the Federal fiscal year following the fiscal year in which the SAHE receives its allocation from the Department. For instance, FY 2003 funds became available to the SAHE on July 1, 2003, and must be obligated by the subgrantees no later than September 30, 2005.

G-25. May a high-need charter school that is an LEA qualify as the high-need LEA principal partner required for a SAHE grant?

Yes. If, under State law, a public charter school is considered to be an LEA and otherwise meets the definition in Section 2102(3) of a "high-need LEA," it is eligible to be the high-need LEA principal partner. Otherwise, a public charter school could still be a non-principal partner in an eligible partnership (or be a part of an LEA that is a component of the partnership).

G-26. May a SAHE use *Title II, Part A* funds reserved for partnership subgrants to support a separate evaluation of subgrantee projects?

No. Evaluation activities of this type may be supported by the *Title II, Part A* program only with funds retained for program administration. However, a SAHE could require partnerships applying for subgrants to include provisions for program assessment or evaluations and then budget for such evaluations in their applications.

Recordkeeping and Reports

G-27. What kinds of records must partnership members keep under the *Title II, Part A* program?

Grantees and subgrantees must keep records that fully show:

- The amount of funds under the grant or subgrant;
- How the grantee or subgrantee uses the funds;
- The total cost of project activities;
- The share of the cost provided from other sources; and
- Other records to facilitate an effective audit.

In addition, all grantees and subgrantees are required to keep records to show their compliance with program requirements. Record keeping should permit an "audit trail" that clearly documents that all funds were used for activities that were reasonable, allowable, and allocable to the program [EDGAR Sections 76.730 and 76.731].

G-28. What are the SAHEs' reporting responsibilities?

The law does not create separate SAHE reporting requirements. However, the Department may, following appropriate procedures for establishing information collections, establish evaluation or data reporting requirements as necessary to monitor the program effectively. For SAHE responsibilities regarding monitoring sub-grantees, see question C-14.

Special Rule

G-29. What is the meaning of Section 2132(c) (the "special rule") that states "no single participant in an eligible partnership may use more than 50 percent of the *Title II, Part A* funds made available to the partnership"?

Section 2132(c) of the law requires that no single participant in an eligible partnership, (i.e., no single high-need LEA, no single IHE and its division that prepares teachers and principals, no single school of arts and sciences, and no other single partner), may "use" more than 50 percent of the subgrant. The provision focuses not on which partner receives the funds, but on which partner directly benefits from them.

Example: Correct Use of Funds

Jefferson University, its College of Education, and its College of Arts and Sciences partner with the Lincoln high-need school district to provide professional development in instructional leadership for 20 principals. Jefferson University's grants office receives **100 percent** of the *Title II, Part A* funds for the partnership. The Grants Office gives:

- the College of Education **25 percent** of the funds to use to pay its faculty to deliver professional development in instructional leadership methodologies for 20 principals at Lincoln school district;
- the College of Arts and Sciences **25 percent** of the funds to use to pay its faculty to deliver professional development content knowledge in instructional leadership for 20 principals at Lincoln School District;
- Lincoln School District **50 percent** of the funds to use to pay stipends for its principals to participate in the professional development offered by faculty from the College of Education and College of Arts and Sciences at Jefferson University.

In this example no partner uses more that 50 percent of the funds for its own benefit.

Example: Incorrect Use of Funds

Jefferson University, its College of Education, and its College of Arts and Sciences partner with the Lincoln high-need school district to provide professional development in instructional leadership for 20 principals. Jefferson University's Grants Office receives **100 percent** of the *Title II, Part A* funds for the partnership. The Grants Office gives:

- the College of Education **20 percent** of the funds to use to pay its faculty to deliver a professional development summer course in instructional leadership methodologies for 20 principals at Lincoln school district;
- the College of Arts and Sciences **10 percent** of the funds to use to pay its faculty to deliver a professional development summer course in instructional leadership content knowledge for 20 principals at Lincoln school district;
- a mentor principal **10 percent** of the funds to work with the 20 Lincoln school district principals, in their buildings, applying what they learned in the professional development summer courses;
- Lincoln school district **60 percent** of the funds to pay stipends to the 20 principals attending the professional development summer courses.

In this example one partner uses more than 50 percent of the funds for its own benefit.

G-30. May two principal partners (e.g., a school of education and a department of arts and sciences) each receive 50 percent of the subgrant funds?

Yes. However, under Section 2132(c), the issue is not the amount of funds that each partner "receives" but the amount of funds that each partner "uses." Hence, so long as each of the two divisions of the IHE "use" 50 percent of the subgrant funds for activities over which it has responsibility (and so directly benefits from the subgrant funds) an IHE fiscal office would not actually need to disburse grant funds to each IHE division (unless, of course, this were the IHE's normal fiscal procedures).

G-31. If an IHE receives program funds that teachers would otherwise pay for IHE-sponsored professional development, would those funds figure in as part of the funds "used" by the IHE partner?

Not necessarily. Since the tuition assistance is for a teacher's professional development, the funds also may reasonably be attributable to use by the LEA partner that employs the teacher. Costs associated with developing professional development materials, IHE faculty time, and other expenses that the IHE incurs to conduct the professional development may be treated as funds used by the division of the IHE that bears these costs.

G-32. If IHE faculty are full-time employees of the IHE, but a percentage of their time and services go to the LEA, which partner is deemed to "use" *Title II, Part A* funds? Similarly, if IHE faculty members receive "release time" to serve LEAs, are their salaries attributable to the IHE or to the LEA partner?

Since the Department has not issued regulations in this area, the subgrantee may attribute these salary costs to the partners in any manner that is reasonable. However, if the subgrant is paying for salary costs that otherwise would be paid by the IHE, it would seem to make sense to view the subgrant used to pay this salary as used by the division of the IHE in which the individuals are employed. Moreover, while faculty release time (i.e., a reduced IHE teaching load) may permit faculty members to provide services to the LEA and its teachers, program funds are still paying for a portion of faculty members' salaries. Therefore, here too, it seems reasonable that these *Title II, Part A* funds are best attributable to the division of the IHE that employs the faculty.

G-33. Are the salaries of teachers hired under a SAHE subgrant to work as mentors to other teachers attributable to the LEA or to the IHE, if the IHE pays these salaries?

While the IHE (should it be the partnership's fiscal agent) may pay the salaries of these mentor teachers, these individuals presumably are working at, and for, the LEA. Therefore, the *Title II, Part, A* funds used to pay these salaries may reasonably be considered to have been "used" by the LEA.

G-34. Are indirect costs of the partnership's fiscal agent treated as part of the maximum allowable 50 percent of *Title II, Part A* funds that the partner may use?

In general, indirect costs reflect general administration and overhead that cannot easily be charged as direct program costs of the programs or activities they benefit, and that are borne by a party as a result of activities it charges as direct costs. While a portion of one partner's direct costs (e.g., salaries of mentor teachers paid by the IHE fiscal agent) may be considered as used by another partner (in this case, the LEA), the IHE and not the LEA is benefiting from being able to charge the indirect costs. Hence, subgrant funds used to pay indirect costs are best attributable to the partner that "uses" the corresponding funds as direct costs.

H. PRIVATE SCHOOL PARTICIPATION

Under the *Title II, Part A* program, private school teachers, principals, and other educational personnel are eligible to participate to the extent that the LEA uses funds to provide for professional development for teachers and other school personnel.

General Issues

H-1. Are private school teachers, principals, and other educational personnel eligible to participate in the *Title II, Part A* program?

Yes. Private school teachers, principals, and other educational personnel are eligible to participate in *Title II, Part A*, to the extent that the LEA uses funds to provide for professional development for teachers and others. Funds awarded to SEAs and LEAs under *Title II, Part A* are subject to the uniform provisions of Section 9501 of the ESEA (*Participation by Private School Children and Teachers*). The statute requires LEAs to provide private school children, their teachers, and other educational personnel with educational services on an equitable basis and in a timely manner.

The requirement for the equitable participation of private school teachers and other educational personnel applies only to the LEA's *Title II, Part A* funds to the extent that the LEA uses these funds for professional development of its teachers and other staff. However, this flexibility is constrained by the requirement described below in H-4.

H-2. What is meant by "equitable participation"?

Participation is considered to be equitable if the public and private educational agencies and institutions: (1) assess, address, and evaluate the needs and progress of both groups of teachers in the same manner; (2) provide approximately the same amount of training and, where appropriate, instruction to teachers with similar needs; (3) spend an equal amount of funds per student to serve public and private school teachers; and (4) provide private school teachers with an opportunity to participate in *Title II, Part A* program activities equivalent to the opportunity provided public school teachers.

Many LEAs calculate equal expenditures strictly on the basis of the relative enrollments of public and private school students, on the assumption that these numbers also accurately reflect the relative needs of students and teachers in public and private schools. It is also permissible for LEAs to use other factors relating to need and not base equal expenditures only on relative enrollments. For example, an LEA may choose poverty as an additional factor in determining equal expenditures and consider the relative poverty of the two groups of students. However, it would not be proper to base the determination solely on poverty (or any other factor relating only to educational need), because the statute requires that both the number and the educational needs of the public and private school students be taken into account. Also, if it uses poverty as a factor, the LEA would need to identify all the private school students from low-income families and not just those who reside in the district. As with other decisions affecting services to private school students, LEAs are to consult with private school officials on the method for determining equal expenditures, and the resulting methodology should reasonably reflect the relative numbers and educational needs of the public and private school students.

H-3. For the purposes of equitable participation, which institutions are considered "private schools"?

For the purposes of equitable participation, a private school is a nonprofit institutional day or residential school that is not under Federal or public supervision or control and that provides elementary and/or secondary education as determined under State law, except that the term does not include any education beyond grade 12.

H-4 How does an LEA determine the minimum amount required for equitable services to private school teachers and other educational personnel?

Under *Title II, Part A*, LEAs are required to provide equitable services for private school teachers and other educational personnel only to the extent that they use the funds for professional development. For purposes of determining the amount of *Title II, Part A* funds that an LEA must make available for equitable services to private school teachers and other educational personnel, the statute has the LEA assume that it is spending at least as much for professional development under *Title II, Part A* as it did in FY 2001 under the Eisenhower Professional Development and Class-Size Reduction programs [*Title IX*, Section 9501(b)(3)(B)].

H-5. If a school district exercises *Title VI* transferability authority and moves funds from *Title II, Part A* to another covered program, is the district required to provide the "hold harmless" amount for private school teachers' professional development?

Yes. As noted in question H-3 above, for purposes of determining the amount of *Title II, Part A* funds it must reserve for professional development provided to private school teachers, the LEA must assume that it is spending at least as much *Title II, Part A* funds each year for professional development as it did with FY 2001 funds under the former Eisenhower Professional Development and Class-Size Reduction programs. Hence, the district must provide equitable services based on this minimal amount to private school teachers and other educational personnel even if the LEA transfers some *Title II* funds to other programs.

H-6. What are the obligations of the LEA regarding the participation of private school teachers in professional development programs funded under this program?

As part of the application process, LEAs must assure that they will comply with Section 9501 of ESEA (regarding participation by private school children and teachers). LEAs must consult with appropriate private school officials during the design, development, and implementation of the professional development program on such issues as:

- how the needs of children and teachers will be identified;
- what services will be offered;
- how, where, and by whom the services will be provided;
- how the services will be assessed and how the results of the assessment will be used to improve those services;

- the size and scope of the equitable services;
- the amount of funds available for those services; and
- how and when the LEA will make decisions about the delivery of services.

Consultation on the delivery of services must also include a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers [Section 9501].

H-7. What happens if an LEA chooses not to participate in the *Title II, Part A* program and a private school in that LEA expresses a desire to do so?

There is no authority for allowing non-public schoolteachers to receive services if the LEA elects not to participate in the program, nor does the program statute authorize an SEA to reallocate funds to another LEA for the purpose of allowing participation of teachers at a private school located in a nonparticipating LEA.

Eligible Activities

H-8. What are some of the eligible activities under this program in which private school teachers and other educational personnel may participate?

As with any activity that the LEA carries out for public school teachers, activities supported with *Title II, Part A* funds that benefit private school teachers must meet the requirements of the statute. For example, activities to be carried out for private school personnel must be based on a review of scientifically based research and must be expected to improve student academic achievement. Professional development activities may include:

- Improving the knowledge of teachers, principals, and other educational personnel in one or more of the core academic subjects and in effective instructional teaching strategies, methods, and skills;
- Training in effectively integrating technology into curricula and instruction;
- Training in how to teach students with different needs, including students with disabilities or limited English proficiency, and gifted and talented students;
- Training in methods of improving student behavior, identifying early and appropriate interventions, and involving parents more effectively in their children's education;
- Leadership development and management training to improve the quality of principals and superintendents; and
- Training in the use of data and assessments to improve instruction and student outcomes.

H-9. Must the expenditures that the LEA provides for professional development for private school teachers be equal on a per-pupil basis?

Title IX, Section 9501 of ESEA requires that *Title II, Part A* services for professional development that are provided to private school teachers and other educational personnel

be equitable in comparison to those provided to public school teachers. It also requires that funds provided for professional development for private school teachers be equal on a per-pupil basis.

H-10. How does the LEA ensure that it is providing equitable services?

To ensure that it is providing equitable professional development services to private school teachers and other educational personnel, the LEA should consider ways to:

- Assess, address, and evaluate the needs and progress of both public and private school teachers;
- Spend an equal amount of funds per student to serve the needs of public and private school teachers and their students;
- Provide private school teachers with an opportunity to participate in *Title II* activities equivalent to the opportunity provided public school teachers; and
- Offer educational services to private school teachers that are secular, neutral, and non-ideological [Section 9501(a)(2)].

H-11 Does the professional development program for private school teachers have to be the same as the professional development program for public school teachers?

No. Consultation and coordination are essential to ensuring high-quality, sustained, intensive, and classroom-focused professional development activities for private school teachers. LEAs must assess the needs of private school teachers in designing the professional development program for private school teachers. If the professional development needs of the private school teachers are different from those of public school teachers, the LEA, in consultation with private school representatives, should develop a separate program.

H-12. May *Title II, Part A* funds be used to pay for a private school teacher's attendance at a professional conference sponsored or conducted by a faith-based organization?

Yes. To the extent that the conference is part of a sustained and comprehensive secular professional development plan for the teacher, then *Title II, Part A* funds may be expended to pay for the portion of the costs of the conference that, as determined by the LEA, represent the secular professional development in which the teacher participated. In this case, the LEA would pay or reimburse the teacher for attendance at the conference.

H-13. May funds be used to pay stipends to private school teachers participating in a *Title II, Part A* professional development program?

Yes. *Title II, Part A* funds may be used to pay for stipends for private school teachers, as reasonable and necessary. For example, if the professional development activity is conducted during after-school hours or in the summer, stipends may be needed to compensate teachers for their participation outside their regular employment hours.

Stipends for private school teachers must be available on the same basis as those for public school teachers *and* the stipends must be paid directly to the private school teachers for their own use, and not to the private school.

H-14. May *Title II, Part A* funds be used to pay any portion of a private school teacher's salary or benefits?

No. While LEAs must set aside an amount of *Title II, Part A* funds for the equitable participation of private school teachers in professional development activities, funds may not be used to pay or subsidize any portion of a private school teacher's salary or benefits.

H-15. May *Title II, Part A* funds be used to pay for substitute teachers who replace teachers from private schools while they attend professional development activities?

No. The *Title II, Part A* program does not authorize payments to private schools to be used for hiring substitute teachers.

H-16. May administrative costs be considered in determining the per-teacher expenditures for private school teachers?

No. LEAs pay the costs of administering professional development programs for public and private school teachers and other educational personnel "off the top" of their allocations. This is calculated before determining how much of the *Title II, Part A* funds are to be made available for professional development of public and private school teachers and other personnel.

H-17. When an LEA provides services to private schools through a third-party contractor, is the contractor permitted to charge administrative costs?

No. Administrative costs of providing services to *both* public and private school students come "off the top" of a district's allocation before the equal expenditures are computed. Since the LEA is reserving its administrative costs "off the top," then the contract administrative costs (including any fee) must come from that set-aside.

H-18. If a private school requires and annually provides, as part of its teacher contract, four days of professional development, may the LEA provide, on these same days, professional development supported by *Title II, Part A* funds?

If the private school is legally bound by contract to provide a certain level of professional development, it would presumably provide those services regardless of whether Federal funds are available, and it would be supplanting to use Federal funds to provide professional development in place of those services. The law requires that all uses of *Title II, Part A* funds supplement non-federal funds that would otherwise be used for activities, and hence, the professional development provided with Federal funds needs to be in addition to, and not in place of, what the private school would otherwise provide.

LEAs and Private Schools

H-19. When must an LEA consult with appropriate private school officials?

To ensure timely and meaningful consultation, an LEA must consult with appropriate private school officials during the design and development of the proposed programs. It is important that attention be given to the timing of the consultation so that decisions that affect the opportunities of eligible private school teachers to participate in *Title II, Part A* program activities are made only after discussions have taken place. The quality of the consultative process will likely have an effect on the quality of services to private school teachers [Section 9501(c)(3) and (4)].

H-20. Must an LEA contact the officials of all private schools every year, even when there have been no recent indications of a desire to participate in the *Title II, Part A* program?

Yes. The LEA is required to contact appropriate officials of all private schools within the boundaries of the school district *annually* to determine if they want their teachers to participate in the *Title II, Part A* program, regardless of whether or not those officials have recently indicated any interest in program participation.

H-21. May an LEA require private school representatives to submit an application in order to receive services for the teachers in a private school with *Title II, Part A* funds?

LEAs may request documentation, as needed, from private school officials that can help the LEA identify services that may be appropriate to the needs of private school teachers. However, requiring a formal application may, depending upon its form and content, constitute an administrative barrier that is inconsistent with the LEA's responsibility to ensure equitable participation of private school teachers.

H-22. What kinds of records should an LEA maintain in order to show that it has met its responsibilities for equitable participation of private school teachers?

To meet its general record-keeping responsibility, an LEA should document that: (a) representatives of private schools were informed of the availability of *Title II, Part A* services; (b) the needs of private and public school teachers were identified as part of a district-wide needs assessment; (c) private school officials were consulted and provided an opportunity for input into the planning of the LEA's program activities; and (d) the LEA designed a project that would permit their equitable participation.

The LEA also should maintain records of its efforts to resolve any complaints made by private school representatives that LEAs that should be serving their teachers are not doing so on an equitable basis.

H-23. Must the LEAs administer and retain control over the *Title II, Part A* funds used to serve private school teachers?

Yes. The LEAs must administer and retain control over the funds and, therefore, may not provide program funds directly to private schools. Before determining the amount of funds to be provided for services to private school teachers, an LEA could pay reasonable and necessary administrative costs of providing those services from its *Title II, Part A* allocation.

H-24. May professional development be conducted within private schools?

Yes, professional development activities may be conducted in the private school facilities.

H-25. Does the law require that LEAs provide equitable services with *Title II, Part A* funding only to private "nonprofit" schools?

Yes. Section 9501(a) requires LEAs to provide equitable services to teachers and students in "private elementary and secondary schools." NCLB defines "elementary" and "secondary" schools to mean only "nonprofit institutional day or residential school(s)" [Section 9101(18) and (38)].

H-26. Are teachers employed with *Title I* funds who provide services to eligible private school children required to meet the highly qualified requirements?

Yes. If they are hired using *Title I* funds to teach core academic subjects they are held to the same requirements as public school teachers.

H-27. Must an LEA count all the students in participating private schools even if some of the students enrolled in the private schools reside in other districts?

Yes. The LEA must provide equitable services based on the number of students who are enrolled in participating private schools in the geographical area served by the school district.

H-28. If a public school district does not use *Title II, Part A* funds to support courses leading to degrees or advanced credentials, is the district nevertheless obligated to offer these services to the private schools upon request?

The ESEA confers on each LEA the responsibility for determining, after appropriate consultation with private school officials, what services to provide to private school teachers, and section 9501(a)(3) of the ESEA requires that the district's provision of services to private school teachers must be "equitable in comparison to services and other benefits for public school ... teachers participating in the program...."

Department regulations in 34 CFR 299.7(c) require a district to examine the particular needs of private school teachers and not simply make available to private school teachers the kinds of services it makes available to public school teachers.

In implementing these provisions, each LEA is responsible for determining, on the basis of the consultation process, the kinds of professional development opportunities that private school teachers will have available. The LEA decision must reflect how private school teachers, consistent with the availability of *Title II, Part A* funds, can best secure the professional development they need to address their own identified teaching needs. How the needs of private school teachers will be assessed is a topic for consultation between the LEA and private school officials, and it may be that through the process of assessing the teaching needs of private school teachers, the needs of private school teachers will not be the same as those of public school teachers. As with services for public school teachers, any *Title II, Part A* expenditures for private school teachers must be reasonable and necessary to carry out the purposes of the program.

In general, we believe that an LEA can (and should), in carrying out its responsibility to provide equitable services to private school teachers, establish policies that, for reasons of effectiveness, quality, cost, and other relevant factors, favor certain kinds of courses or other forms of professional development that the *Title II, Part A* statute authorizes over others. However, we do not believe that 34 CFR 299.7(c) permits a district to establish a blanket rule that forbids any private school teacher from receiving certain forms of professional development that the *Title II, Part A* statute otherwise authorizes and that best meet that teacher's identified teaching needs related to improving student academic achievement.

SEAs, SAHEs, and Private Schools

H-29. Must an SEA provide equitable services to private school teachers if it uses its *Title II, Part A* funds reserved for State activities to provide professional development?

Yes. An SEA must provide equitable services to public and private school teachers and other educational personnel in professional development activities supported by these funds.

H-30. Do the ESEA *Title IX* requirements regarding services to private school teachers apply to activities conducted under the competitive awards made under SAHE-administered partnerships program?

Yes. The SAHE-funded grants to partnerships of IHEs and high-need LEAs must ensure that services are offered on an equitable basis to public and private school teachers since the requirements apply to grants of "financial assistance" provided to an LEA "or another entity" [Section 9501(b)(1)].

APPENDIX A

Definitions, Acronyms, and Abbreviations

AYP: Adequate Yearly Progress

ARTS AND SCIENCES: (A) When referring to an organizational unit of an institution of higher education, any academic unit that offers one or more academic majors in disciplines or content areas corresponding to the academic subjects in which teachers teach; and B) when referring to a specific academic subject, the disciplines or content areas in which an academic major is offered by an organizational unit [Section 2102(1)].

CFR: Code of Federal Regulations

CHARTER SCHOOL: The term "charter school" means its the purpose of eligibility under the Federal Charter Schools program, a public school that:

1. In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of the paragraph of the statute that defines "charter schools";

2. Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

3. Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

4. Provides a program of elementary or secondary education, or both;

5. Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

6. Does not charge tuition;

7. Complies with the Age Discrimination Act of 1975, *Title VI* of the Civil Rights Act of 1964, *Title IX* of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act;

8. Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

9. Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of the Charter Schools program;

10. Meets all applicable Federal, State, and local health and safety requirements;

11. Operates in accordance with State law; and

12. Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school [Section 5210(1)].

CORE ACADEMIC SUBJECTS: The term "core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography [Section 9101(11)].

THE DEPARTMENT: U.S. Department of Education

EDGAR: Education Department General Administrative Regulations

EISENHOWER PROGRAM: Eisenhower Professional Development Program

ESEA: Elementary and Secondary Education Act of 1965, as amended

ELIGIBLE PARTNERSHIP: This term includes a private or State institution of higher education and the division of the institution that prepares teachers and principals; a school of arts and sciences; and a high-need LEA; and may include another LEA, a public charter school, an elementary school or secondary school, an educational service agency, a nonprofit educational organization, another institution of higher education, a school of arts and sciences within such an institution, the division of such an institution that prepares teachers and principals, a nonprofit cultural organization, an entity carrying out a pre-kindergarten program, a teacher organization, a principal organization, or a business [Section 2131].

ESL: English as a Second Language

FERPA: Family Educational Rights and Privacy Act

FY: Fiscal Year

HIGH-NEED LEA: An LEA that serves not fewer than 10,000 children from families with incomes below the poverty line; or for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; and for which there is a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach; or for which there is a high percentage of teachers with emergency, provisional, or temporary certification or licensing [Section 2102(3)].

HEA: Higher Education Act

HIGHLY QUALIFIED PARAPROFESSIONAL: A paraprofessional who has not less than 2 years of experience in a classroom; and post-secondary education or demonstrated competence in a field or academic subject for which there is a significant shortage of qualified teachers [Section 2102(4)].

HIGHLY QUALIFIED TEACHER:

1. When the term "highly qualified teacher" is used with respect to any public elementary school or secondary school teacher teaching in a State, it means that:

    a. The teacher has obtained full State certification as a teacher (including certification obtained through alternate routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when the term is used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the certification or licensing requirements set forth in the State's public charter school law *(see entry below for the definition of a highly qualified charter school teacher);* and

        i) The teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

2. When the term "highly qualified teacher" is used with respect to:

    a. An elementary school teacher who is new to the profession, it means that the teacher has met the requirements of paragraph (a) above, and:

        i) Holds at least a bachelor's degree; and

        ii) Has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of basic elementary school curriculum); or

    b. A middle school or secondary teacher who is new to the profession, it means that the teacher has met the requirements of paragraph (a) above, holds at least a bachelor's degree, and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by:

        i) Passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); **or**

        ii) Successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

3. When the term "highly qualified teacher" is used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, it means that the teacher has met the requirements of paragraph (a) above, holds at least a bachelor's degree, and:

a. Has met the applicable standard requirements, which includes an option for a test; **or**

b. Demonstrates competency in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that-

i) Is set by the State for both grade appropriate academic subject-matter knowledge and teaching skills;

ii) Is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

iii) Provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches;

iv) Is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;

v) Takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject;

vi) Is made available to the public upon request; and

vii) May involve multiple, objective measures of teacher competency [Section 9101(23)].

4. When the term "highly qualified teacher" is used with respect to any public elementary school or secondary school special education teacher teaching in a State, it means that:

a. The teacher has obtained full State certification as a special education teacher (including certification obtained through alternate routes to certification) or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when the term is used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the certification or licensing requirements set forth in the State's public charter school law *(see entry below for the definition of a highly qualified charter school teacher);* and

i) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

ii) The teacher holds at least a bachelor's degree.

HIGHLY QUALIFIED CHARTER SCHOOL TEACHER: Charter school teachers who teach core academic subjects must comply with any provision in a State's charter school law regarding certification

or licensure requirements. A teacher in a charter school does not have to be licensed or certified by the State if the State does not require such licensure or certification. However, teachers of core academic subjects in charter schools must meet the other requirements that apply to public school teachers, including holding a four-year college degree and demonstrating competency in the subject area in which they teach. (See definition above for information on how teachers can demonstrate subject area competence.)

HIGHLY QUALIFIED VOCATIONAL EDUCATION TEACHER: Only vocational education teachers who teach core academic courses are required to meet the definition of a highly qualified teacher. The term "core academic subjects" is defined in ESEA as "English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography."

HIGH QUALITY PROFESSIONAL DEVELOPMENT: See the definition for "professional development."

IHE: Institution of Higher Education

LEA: Local educational agency

LOW-PERFORMING SCHOOL: The term "low-performing school" means an elementary school or secondary school that is identified under Section 1116 of ESEA.

NCLB: The *No Child Left Behind* Act of 2001

OMB: Office of Management and Budget

OUT-OF-FIELD TEACHER: A teacher who is teaching an academic subject or a grade level for which the teacher is not highly qualified [Section 2102(5)].

PARAPROFESSIONAL: A paraprofessional is an individual with instructional duties. Individuals who work solely in non-instructional roles, such as food service, cafeteria or playground supervision, personal care services, and non-instructional computer assistance are not considered to be paraprofessionals for *Title I* purposes.

PRINCIPAL: The term "principal" includes an assistant principal [Section 2102(6)].

PROFESSIONAL DEVELOPMENT: [Section 9101(34)] The term "professional development":

1. Includes activities that:

    a. Improve and increase teachers' knowledge of the academic subjects the teachers teach, and enable teachers to become highly qualified;

    b. Are an integral part of broad schoolwide and districtwide educational improvement plans;

c. Give teachers, principals, and administrators the knowledge and skills to provide students with the opportunity to meet challenging State academic content standards and student academic achievement standards;

d. Improve classroom management skills;

e. Are high quality, sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction and the teacher's performance in the classroom and are not 1-day or short-term workshops or conferences;

f. Support the recruiting, hiring, and training of highly qualified teachers, including teachers who became highly qualified through State and local alternate routes to certification;

g. Advance teacher understanding of effective instructional strategies that are:

i) Based on scientifically based research (except that this subclause shall not apply to activities carried out under Part D of Title II); and

ii) Strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers; and

h. Are aligned with and directly related to:

i) State academic content standards, student academic achievement standards, and assessments; and

ii) The curricula and programs tied to the standards described in subclause (a) [except that this subclause shall not apply to activities described in clauses (ii) and (iii) of Section 2123(3)(B)];

i. Are developed with extensive participation of teachers, principals, parents, and administrators of schools to be served under this Act;

j. Are designed to give teachers of limited English proficient children, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;

k. To the extent appropriate, provide training for teachers and principals in the use of technology so that technology and technology applications are effectively used in the classroom to improve teaching and learning in the curricula and core academic subjects in which the teachers teach;

l. As a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to improve the quality of professional development;

m. Provide instruction in methods of teaching children with special needs;

n. Include instruction in the use of data and assessments to inform and instruct classroom practice; and

o. Include instruction in ways that teachers, principals, pupil services personnel, and school administrators may work more effectively with parents; and

2. May include activities that:

a. Involve the forming of partnerships with institutions of higher education to establish school-based teacher training programs that provide prospective teachers and beginning teachers with an opportunity to work under the guidance of experienced teachers and college faculty;

b. Create programs to enable paraprofessionals (assisting teachers employed by a LEA receiving assistance under Part A of Title I) to obtain the education necessary for those paraprofessionals to become certified and licensed teachers; and

c. Provide follow-up training to teachers who have participated in activities described in subparagraph (A) or another clause of this subparagraph that is designed to ensure that the knowledge and skills learned by the teachers are implemented in the classroom [Section 9101(34)].

PUPIL SERVICES PERSONNEL; PUPIL SERVICES: The term "pupil services personnel" means school counselors, school social workers, school psychologists, and other qualified professional personnel involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as that term is defined in Section 602 of the Individuals with Disabilities Education Act) as part of a comprehensive program to meet student needs. The term "pupil services" means the services provided by pupil services personnel [Section 9101(36)].

RFP: Request for Proposal

SCIENTIFICALLY BASED RESEARCH: The term "scientifically based research":

1. Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

2. Includes research that--

a. Employs systematic, empirical methods that draw on observation or experiment;

b. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

c. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

d. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

e. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

f. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review [Section 9101(37)].

SECRETARY: Secretary of Education, U.S. Department of Education

SAHE: State agency for higher education

SEA: State educational agency

STATUTE: The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the *No Child Left Behind Act of 2001*

APPENDIX B

Title II, Part A Statute

PART A - TEACHER AND PRINCIPAL TRAINING AND RECRUITING FUND

SEC. 2101. PURPOSE.

The purpose of this part is to provide grants to State educational agencies, local educational agencies, State agencies for higher education, and eligible partnerships in order to -

(1) increase student academic achievement through strategies such as improving teacher and principal quality and increasing the number of highly qualified teachers in the classroom and highly qualified principals and assistant principals in schools; and

(2) hold local educational agencies and schools accountable for improvements in student academic achievement.

SEC. 2102. DEFINITIONS.

In this part:

(1) ARTS AND SCIENCES- The term arts and sciences' means -

(A) when referring to an organizational unit of an institution of higher education, any academic unit that offers one or more academic majors in disciplines or content areas corresponding to the academic subjects in which teachers teach; and

(B) when referring to a specific academic subject, the disciplines or content areas in which an academic major is offered by an organizational unit described in subparagraph (A).

(2) CHARTER SCHOOL- The term charter school' has the meaning given the term in section 5210.

(3) HIGH-NEED LOCAL EDUCATIONAL AGENCY- The term high-need local educational agency' means a local educational agency -

(A)(i) that serves not fewer than 10,000 children from families with incomes below the poverty line; or

(ii) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; and

(B)(i) for which there is a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach; or

(ii) for which there is a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

(4) HIGHLY QUALIFIED PARAPROFESSIONAL- The term highly qualified paraprofessional' means a paraprofessional who has not less than 2 years of -

(A) experience in a classroom; and

(B) postsecondary education or demonstrated competence in a field or academic subject for which there is a significant shortage of qualified teachers.

(5) OUT-OF-FIELD TEACHER- The term out-of-field teacher' means a teacher who is teaching an academic subject or a grade level for which the teacher is not highly qualified.

(6) PRINCIPAL- The term principal' includes an assistant principal.

SEC. 2103. AUTHORIZATIONS OF APPROPRIATIONS.

(a) GRANTS TO STATES, LOCAL EDUCATIONAL AGENCIES, AND ELIGIBLE PARTNERSHIPS- There are authorized to be appropriated to carry out this part (other than subpart 5) $3,175,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

Subpart 1 - Grants to States

SEC. 2111. ALLOTMENTS TO STATES.

(a) IN GENERAL- The Secretary shall make grants to States with applications approved under section 2112 to pay for the Federal share of the cost of carrying out the activities specified in section 2113. Each grant shall consist of the allotment determined for a State under subsection (b).

(b) DETERMINATION OF ALLOTMENTS-

(1) RESERVATION OF FUNDS-

(A) IN GENERAL- From the total amount appropriated under section 2103(a) for a fiscal year, the Secretary shall reserve -

(i) one-half of 1 percent for allotments for the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, to be distributed among those outlying areas on the basis of their relative need, as determined by the Secretary, in accordance with the purpose of this part; and

(ii) one-half of 1 percent for the Secretary of the Interior for programs under this part in schools operated or funded by the Bureau of Indian Affairs.

(2) STATE ALLOTMENTS-

(A) HOLD HARMLESS-

(i) IN GENERAL- Subject to subparagraph (B), from the funds appropriated under section 2103(a) for any fiscal year and not reserved under paragraph (1), the Secretary shall allot to each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the total amount that such State received for fiscal year 2001 under -

(I) section 2202(b) of this Act (as in effect on the day before the date of enactment of the No Child Left Behind Act of 2001); and

(II) section 306 of the Department of Education Appropriations Act, 2001 (as enacted into law by section 1(a)(1) of Public Law 106-554).

(ii) RATABLE REDUCTION- If the funds described in clause (i) are insufficient to pay the full amounts that all States are eligible to receive under clause (i) for any fiscal year, the Secretary shall ratably reduce those amounts for the fiscal year.

(B) ALLOTMENT OF ADDITIONAL FUNDS-

(i) IN GENERAL- Subject to clause (ii), for any fiscal year for which the funds appropriated under section 2103(a) and not reserved under paragraph (1) exceed the total amount required to make allotments under subparagraph (A), the Secretary shall allot to each of the States described in subparagraph (A) the sum of -

(I) an amount that bears the same relationship to 35 percent of the excess amount as the number of individuals age 5 through 17 in the State, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals in all such States, as so determined; and

(II) an amount that bears the same relationship to 65 percent of the excess amount as the number of individuals age 5 through 17 from families with incomes below the poverty line, in the State, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals in all such States, as so determined.

(ii) EXCEPTION- No State receiving an allotment under clause (i) may receive less than one-half of 1 percent of the total excess amount allotted under such clause for a fiscal year.

(3) REALLOTMENT- If any State does not apply for an allotment under this subsection for any fiscal year, the Secretary shall reallot the amount of the allotment to the remaining States in accordance with this subsection.

SEC. 2112. STATE APPLICATIONS.

(a) IN GENERAL- For a State to be eligible to receive a grant under this part, the State educational agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) CONTENTS- Each application submitted under this section shall include the following:

(1) A description of how the activities to be carried out by the State educational agency under this subpart will be based on a review of scientifically based research and an explanation of why the activities are expected to improve student academic achievement.

(2) A description of how the State educational agency will ensure that a local educational agency receiving a subgrant to carry out subpart 2 will comply with the requirements of such subpart.

(3) A description of how the State educational agency will ensure that activities assisted under this subpart are aligned with challenging State academic content and student academic achievement standards, State assessments, and State and local curricula.

(4) A description of how the State educational agency will use funds under this part to improve the quality of the State's teachers and principals.

(5)(A) A description of how the State educational agency will coordinate professional development activities authorized under this part with professional development activities provided under other Federal, State, and local programs.

(B) A description of the comprehensive strategy that the State educational agency will use, as part of such coordination effort, to ensure that teachers are trained in the use of technology so that technology and applications of technology are effectively used in the classroom to improve teaching and learning in all curricula and academic subjects, as appropriate.

(6) A description of how the State educational agency will encourage the development of proven, innovative strategies to deliver intensive professional development programs that are both cost-effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(7)(A) A description of how the State educational agency will ensure compliance with the requirements for professional development activities described in section 9101 and how the activities to be carried out under the grant will be developed collaboratively and based on the input of teachers, principals, parents, administrators, paraprofessionals, and other school personnel.

(B) In the case of a State in which the State educational agency is not the entity responsible for teacher professional standards, certification, and licensing, an assurance that the State activities carried out under this subpart are carried out in conjunction with the entity responsible for such standards, certification, and licensing under State law.

(8) A description of how the State educational agency will ensure that the professional development (including teacher mentoring) needs of teachers will be met using funds under this subpart and subpart 2.

(9) A description of the State educational agency's annual measurable objectives under section 1119(a)(2).

(10) A description of how the State educational agency will use funds under this part to meet the teacher and paraprofessional requirements of section 1119 and how the State educational agency will hold local educational agencies accountable for meeting the annual measurable objectives described in section 1119(a)(2).

(11) In the case of a State that has a charter school law that exempts teachers from State certification and licensing requirements, the specific portion of the State law that provides for the exemption.

(12) An assurance that the State educational agency will comply with section 9501 (regarding participation by private school children and teachers).

(c) DEEMED APPROVAL- An application submitted by a State educational agency pursuant to subsection (a) shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the application, that the application is not in compliance with this subpart.

(d) DISAPPROVAL- The Secretary shall not finally disapprove the application, except after giving the State educational agency notice and an opportunity for a hearing.

(e) NOTIFICATION- If the Secretary finds that the application is not in compliance, in whole or in part, with this subpart, the Secretary shall--

(1) give the State educational agency notice and an opportunity for a hearing; and
(2) notify the State educational agency of the finding of noncompliance and, in such notification, shall--
(A) cite the specific provisions in the application that are not in compliance; and
(B) request additional information, only as to the noncompliant provisions, needed to make the application compliant.

(f) RESPONSE- If the State educational agency responds to the Secretary's notification described in subsection (e)(2) during the 45-day period beginning on the date on which the agency received the notification, and resubmits the application with the requested information described in subsection (e)(2)(B), the Secretary shall approve or disapprove such application prior to the later of--
(1) the expiration of the 45-day period beginning on the date on which the application is resubmitted; or
(2) the expiration of the 120-day period described in subsection (c).

(g) FAILURE TO RESPOND- If the State educational agency does not respond to the Secretary's notification described in subsection (e)(2) during the 45-day period beginning on the date on which the agency received the notification, such application shall be deemed to be disapproved.

SEC. 2113. STATE USE OF FUNDS.

(a) IN GENERAL- A State that receives a grant under section 2111 shall -
(1) reserve 95 percent of the funds made available through the grant to make subgrants to local educational agencies as described in subpart 2;
(2) reserve 2.5 percent (or, for a fiscal year described in subsection (b), the percentage determined under subsection (b)) of the funds to make subgrants to local partnerships as described in subpart 3; and
(3) use the remainder of the funds for State activities described in subsection (c).

(b) SPECIAL RULE- For any fiscal year for which the total amount that would be reserved by all States under subsection (a)(2), if the States applied a 2.5 percentage rate, exceeds $125,000,000, the Secretary shall determine an alternative percentage that the States shall apply for that fiscal year under subsection (a)(2) so that the total amount reserved by all States under subsection (a)(2) equals $125,000,000.

(c) STATE ACTIVITIES- The State educational agency for a State that receives a grant under section 2111 shall use the funds described in subsection (a)(3) to carry out one or more of the following activities, which may be carried out through a grant or contract with a for-profit or nonprofit entity:
(1) Reforming teacher and principal certification (including recertification) or licensing requirements to ensure that -
(A)(i) teachers have the necessary subject-matter knowledge and teaching skills in the academic subjects that the teachers teach; and
(ii) principals have the instructional leadership skills to help teachers teach and students learn;
(B) teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and
(C) teachers have the subject-matter knowledge and teaching skills, including technology literacy, and principals have the instructional leadership skills, necessary to help students meet challenging State student academic achievement standards.
(2) Carrying out programs that provide support to teachers or principals, including support for teachers and principals new to their profession, such as programs that -
(A) provide teacher mentoring, team teaching, reduced class schedules, and intensive professional development; and
(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement standards and with the requirements for professional development activities described in section 9101.
(3) Carrying out programs that establish, expand, or improve alternative routes for State certification of teachers and principals, especially in the areas of mathematics and science, for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, former military personnel, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective teachers or principals.
(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified teachers, including specialists in core academic subjects, principals, and pupil services personnel, except that funds made available under this paragraph may be used for pupil services personnel only -
(A) if the State educational agency is making progress toward meeting the annual measurable objectives described in section 1119(a)(2); and
(B) in a manner consistent with mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified teachers and principals.
(5) Reforming tenure systems, implementing teacher testing for subject-matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.
(6) Providing professional development for teachers and principals and, in cases in which a State educational agency determines support to be appropriate, supporting the participation of pupil services personnel in the same type of professional development activities as are made available to teachers and principals.
(7) Developing systems to measure the effectiveness of specific professional development programs and strategies to document gains in student academic achievement or increases in teacher mastery of the academic subjects the teachers teach.
(8) Fulfilling the State educational agency's responsibilities concerning proper and efficient administration of the programs carried out under this part, including provision of technical assistance to local educational agencies.
(9) Funding projects to promote reciprocity of teacher and principal certification or licensing between or among States, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this part may lead to the weakening of any State teaching certification or licensing requirement.

(10) Developing or assisting local educational agencies in the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost-effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.
(11) Encouraging and supporting the training of teachers and administrators to effectively integrate technology into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability.
(12) Developing, or assisting local educational agencies in developing, merit-based performance systems, and strategies that provide differential and bonus pay for teachers in high-need academic subjects such as reading, mathematics, and science and teachers in high-poverty schools and districts.
(13) Providing assistance to local educational agencies for the development and implementation of professional development programs for principals that enable the principals to be effective school leaders and prepare all students to meet challenging State academic content and student academic achievement standards, and the development and support of school leadership academies to help exceptionally talented aspiring or current principals and superintendents become outstanding managers and educational leaders.
(14) Developing, or assisting local educational agencies in developing, teacher advancement initiatives that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.
(15) Providing assistance to teachers to enable them to meet certification, licensing, or other requirements needed to become highly qualified by the end of the fourth year for which the State receives funds under this part (as amended by the No Child Left Behind Act of 2001).
(16) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement standards, and State assessments, to improve instructional practices and improve student academic achievement.
(17) Funding projects and carrying out programs to encourage men to become elementary school teachers.
(18) Establishing and operating a center that -
(A) serves as a statewide clearinghouse for the recruitment and placement of kindergarten, elementary school, and secondary school teachers; and
(B) establishes and carries out programs to improve teacher recruitment and retention within the State.

(d) ADMINISTRATIVE COSTS- A State educational agency or State agency for higher education receiving a grant under this part may use not more than 1 percent of the grant funds for planning and administration related to carrying out activities under subsection (c) and subpart 3.
(e) COORDINATION- A State that receives a grant to carry out this subpart and a grant under section 202 of the Higher Education Act of 1965 shall coordinate the activities carried out under this subpart and the activities carried out under that section.
(f) SUPPLEMENT, NOT SUPPLANT- Funds received under this subpart shall be used to supplement, and not supplant, non-Federal funds that would otherwise be used for activities authorized under this subpart.

Subpart 2 - Subgrants to Local Educational Agencies

SEC. 2121. ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.

(a) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES-
(1) IN GENERAL- The Secretary may make a grant to a State under subpart 1 only if the State educational agency agrees to distribute the funds described in this subsection as subgrants to local educational agencies under this subpart.
(2) HOLD HARMLESS-
(A) IN GENERAL- From the funds reserved by a State under section 2113(a)(1), the State educational agency shall allocate to each local educational agency in the State an amount equal to the total amount that such agency received for fiscal year 2001 under -
(i) section 2203(1)(B) of this Act (as in effect on the day before the date of enactment of the No Child Left Behind Act of 2001); and
(ii) section 306 of the Department of Education Appropriations Act, 2001 (as enacted into law by section 1(a)(1) of Public Law 106-554).
(B) NONPARTICIPATING AGENCIES- In the case of a local educational agency that did not receive any funds for fiscal year 2001 under one or both of the provisions referred to in clauses (i) and (ii) of subparagraph (A), the amount allocated to the agency under such subparagraph shall be the total amount that the agency would have received for fiscal year 2001 if the agency had elected to participate in all of the programs for which the agency was eligible under each of the provisions referred to in those clauses.
(C) RATABLE REDUCTION- If the funds described in subparagraph (A) are insufficient to pay the full amounts that all local educational agencies in the State are eligible to receive under subparagraph (A) for any fiscal year, the State educational agency shall ratably reduce such amounts for the fiscal year.
(3) ALLOCATION OF ADDITIONAL FUNDS- For any fiscal year for which the funds reserved by a State under section 2113(a)(1) exceed the total amount required to make allocations under paragraph (2), the State educational agency shall allocate to each of the eligible local educational agencies in the State the sum of -
(A) an amount that bears the same relationship to 20 percent of the excess amount as the number of individuals age 5 through 17 in the geographic area served by the agency, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals in the geographic areas served by all the local educational agencies in the State, as so determined; and
(B) an amount that bears the same relationship to 80 percent of the excess amount as the number of individuals age 5 through 17 from families with incomes below the poverty line in the geographic area served by the agency, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number

of those individuals in the geographic areas served by all the local educational agencies in the State, as so determined.

SEC. 2122. LOCAL APPLICATIONS AND NEEDS ASSESSMENT.

(a) IN GENERAL- To be eligible to receive a subgrant under this subpart, a local educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require.

(b) CONTENTS- Each application submitted under this section shall be based on the needs assessment required in subsection (c) and shall include the following:

(1)(A) A description of the activities to be carried out by the local educational agency under this subpart and how these activities will be aligned with -

(i) challenging State academic content standards and student academic achievement standards, and State assessments; and

(ii) the curricula and programs tied to the standards described in clause (i).

(B) A description of how the activities will be based on a review of scientifically based research and an explanation of why the activities are expected to improve student academic achievement.

(2) A description of how the activities will have a substantial, measurable, and positive impact on student academic achievement and how the activities will be used as part of a broader strategy to eliminate the achievement gap that separates low-income and minority students from other students.

(3) An assurance that the local educational agency will target funds to schools within the jurisdiction of the local educational agency that -

(A) have the lowest proportion of highly qualified teachers;

(B) have the largest average class size; or

(C) are identified for school improvement under section 1116(b).

(4) A description of how the local educational agency will coordinate professional development activities authorized under this subpart with professional development activities provided through other Federal, State, and local programs.

(5) A description of the professional development activities that will be made available to teachers and principals under this subpart and how the local educational agency will ensure that the professional development (which may include teacher mentoring) needs of teachers and principals will be met using funds under this subpart.

(6) A description of how the local educational agency will integrate funds under this subpart with funds received under part D that are used for professional development to train teachers to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy.

(7) A description of how the local educational agency, teachers, paraprofessionals, principals, other relevant school personnel, and parents have collaborated in the planning of activities to be carried out under this subpart and in the preparation of the application.

(8) A description of the results of the needs assessment described in subsection (c).

(9) A description of how the local educational agency will provide training to enable teachers to -

(A) teach and address the needs of students with different learning styles, particularly students with disabilities, students with special learning needs (including students who are gifted and talented), and students with limited English proficiency;

(B) improve student behavior in the classroom and identify early and appropriate interventions to help students described in subparagraph (A) learn;

(C) involve parents in their child's education; and

(D) understand and use data and assessments to improve classroom practice and student learning.

(10) A description of how the local educational agency will use funds under this subpart to meet the requirements of section 1119.

(11) An assurance that the local educational agency will comply with section 9501 (regarding participation by private school children and teachers).

(c) NEEDS ASSESSMENT-

(1) IN GENERAL- To be eligible to receive a subgrant under this subpart, a local educational agency shall conduct an assessment of local needs for professional development and hiring, as identified by the local educational agency and school staff.

(2) REQUIREMENTS- Such needs assessment shall be conducted with the involvement of teachers, including teachers participating in programs under part A of title I, and shall take into account the activities that need to be conducted in order to give teachers the means, including subject-matter knowledge and teaching skills, and to give principals the instructional leadership skills to help teachers, to provide students with the opportunity to meet challenging State and local student academic achievement standards.

SEC. 2123. LOCAL USE OF FUNDS.

(a) IN GENERAL- A local educational agency that receives a subgrant under section 2121 shall use the funds made available through the subgrant to carry out one or more of the following activities, including carrying out the activities through a grant or contract with a for-profit or nonprofit entity:

(1) Developing and implementing mechanisms to assist schools in effectively recruiting and retaining highly qualified teachers, including specialists in core academic subjects, principals, and pupil services personnel, except that funds made available under this paragraph may be used for pupil services personnel only -

(A) if the local educational agency is making progress toward meeting the annual measurable objectives described in section 1119(a)(2); and

(B) in a manner consistent with mechanisms to assist schools in effectively recruiting and retaining highly qualified teachers and principals.

(2) Developing and implementing initiatives to assist in recruiting highly qualified teachers (particularly initiatives that have proven effective in retaining highly qualified teachers), and hiring highly qualified teachers, who will be assigned teaching positions within their fields, including -

(A) providing scholarships, signing bonuses, or other financial incentives, such as differential pay, for teachers to teach -

(i) in academic subjects in which there exists a shortage of highly qualified teachers within a school or within the local educational agency; and

(ii) in schools in which there exists a shortage of highly qualified teachers;

(B) recruiting and hiring highly qualified teachers to reduce class size, particularly in the early grades; and

(C) establishing programs that -

(i) train and hire regular and special education teachers (which may include hiring special education teachers to team-teach in classrooms that contain both children with disabilities and nondisabled children);

(ii) train and hire highly qualified teachers of special needs children, as well as teaching specialists in core academic subjects who will provide increased individualized instruction to students;

(iii) recruit qualified professionals from other fields, including highly qualified paraprofessionals, and provide such professionals with alternative routes to teacher certification, including developing and implementing hiring policies that ensure comprehensive recruitment efforts as a way to expand the applicant pool, such as through identifying teachers certified through alternative routes, and using a system of intensive screening designed to hire the most qualified applicants; and

(iv) provide increased opportunities for minorities, individuals with disabilities, and other individuals underrepresented in the teaching profession.

(3) Providing professional development activities--

(A) that improve the knowledge of teachers and principals and, in appropriate cases, paraprofessionals, concerning--

(i) one or more of the core academic subjects that the teachers teach; and

(ii) effective instructional strategies, methods, and skills, and use of challenging State academic content standards and student academic achievement standards, and State assessments, to improve teaching practices and student academic achievement; and

(B) that improve the knowledge of teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that--

(i) involve collaborative groups of teachers and administrators;

(ii) provide training in how to teach and address the needs of students with different learning styles, particularly students with disabilities, students with special learning needs (including students who are gifted and talented), and students with limited English proficiency;

(iii) provide training in methods of--

(I) improving student behavior in the classroom; and

(II) identifying early and appropriate interventions to help students described in clause (ii) learn;

(iv) provide training to enable teachers and principals to involve parents in their child's education, especially parents of limited English proficient and immigrant children; and

(v) provide training on how to understand and use data and assessments to improve classroom practice and student learning.

(4) Developing and implementing initiatives to promote retention of highly qualified teachers and principals, particularly within elementary schools and secondary schools with a high percentage of low-achieving students, including programs that provide--

(A) teacher mentoring from exemplary teachers, principals, or superintendents;

(B) induction and support for teachers and principals during their first 3 years of employment as teachers or principals, respectively;

(C) incentives, including financial incentives, to retain teachers who have a record of success in helping low-achieving students improve their academic achievement; or

(D) incentives, including financial incentives, to principals who have a record of improving the academic achievement of all students, but particularly students from economically disadvantaged families, students from racial and ethnic minority groups, and students with disabilities.

(5) Carrying out programs and activities that are designed to improve the quality of the teacher force, such as--

(A) innovative professional development programs (which may be provided through partnerships including institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, are consistent with the requirements of section 9101, and are coordinated with activities carried out under part D;

(B) development and use of proven, cost-effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning;

(C) tenure reform;

(D) merit pay programs; and

(E) testing of elementary school and secondary school teachers in the academic subjects that the teachers teach.

(6) Carrying out professional development activities designed to improve the quality of principals and superintendents, including the development and support of academies to help talented aspiring or current principals and superintendents become outstanding managers and educational leaders.

(7) Hiring highly qualified teachers, including teachers who become highly qualified through State and local alternative routes to certification, and special education teachers, in order to reduce class size, particularly in the early grades.

(8) Carrying out teacher advancement initiatives that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(10) Carrying out programs and activities related to exemplary teachers.

(b) SUPPLEMENT, NOT SUPPLANT- Funds received under this subpart shall be used to supplement, and not supplant, non-Federal funds that would otherwise be used for activities authorized under this subpart.

Subpart 3 - Subgrants to Eligible Partnerships

SEC. 2131. DEFINITIONS.

In this subpart:

(1) ELIGIBLE PARTNERSHIP- The term eligible partnership' means an entity that -

(A) shall include -

(i) a private or State institution of higher education and the division of the institution that prepares teachers and principals;

(ii) a school of arts and sciences; and

(iii) a high-need local educational agency; and

(B) may include another local educational agency, a public charter school, an elementary school or secondary school, an educational service agency, a nonprofit educational organization, another institution of higher education, a school of arts and sciences within such an institution, the division of such an institution that prepares teachers and principals, a nonprofit cultural organization, an entity carrying out a prekindergarten program, a teacher organization, a principal organization, or a business.

(2) LOW-PERFORMING SCHOOL- The term low-performing school' means an elementary school or secondary school that is identified under section 1116.

SEC. 2132. SUBGRANTS.

(a) IN GENERAL- The State agency for higher education for a State that receives a grant under section 2111, working in conjunction with the State educational agency (if such agencies are separate), shall use the funds reserved under section 2113(a)(2) to make subgrants, on a competitive basis, to eligible partnerships to enable such partnerships to carry out the activities described in section 2134.

(b) DISTRIBUTION- The State agency for higher education shall ensure that -

(1) such subgrants are equitably distributed by geographic area within a State; or

(2) eligible partnerships in all geographic areas within the State are served through the subgrants.

(c) SPECIAL RULE- No single participant in an eligible partnership may use more than 50 percent of the funds made available to the partnership under this section.

SEC. 2133. APPLICATIONS.

To be eligible to receive a subgrant under this subpart, an eligible partnership shall submit an application to the State agency for higher education at such time, in such manner, and containing such information as the agency may require.

SEC. 2134. USE OF FUNDS.

(a) IN GENERAL- An eligible partnership that receives a subgrant under section 2132 shall use the subgrant funds for -

(1) professional development activities in core academic subjects to ensure that -

(A) teachers and highly qualified paraprofessionals, and, if appropriate, principals have subject-matter knowledge in the academic subjects that the teachers teach, including the use of computer related technology to enhance student learning; and

(B) principals have the instructional leadership skills that will help such principals work most effectively with teachers to help students master core academic subjects; and

(2) developing and providing assistance to local educational agencies and individuals who are teachers, highly qualified paraprofessionals, or principals of schools served by such agencies, for sustained, high-quality professional development activities that -

(A) ensure that the individuals are able to use challenging State academic content standards and student academic achievement standards, and State assessments, to improve instructional practices and improve student academic achievement;

(B) may include intensive programs designed to prepare such individuals who will return to a school to provide instruction related to the professional development described in subparagraph (A) to other such individuals within such school; and

(C) may include activities of partnerships between one or more local educational agencies, one or more schools served by such local educational agencies, and one or more institutions of higher education for the purpose of improving teaching and learning at low-performing schools.

(b) COORDINATION- An eligible partnership that receives a subgrant to carry out this subpart and a grant under section 203 of the Higher Education Act of 1965 shall coordinate the activities carried out under this subpart and the activities carried out under that section 203.

Subpart 4 - Accountability

SEC. 2141. TECHNICAL ASSISTANCE AND ACCOUNTABILITY.

(a) IMPROVEMENT PLAN- After the second year of the plan described in section 1119(a)(2), if a State educational agency determines, based on the reports described in section 1119(b)(1), that a local educational agency in the State has failed to make progress toward meeting the annual measurable objectives described in section 1119(a)(2), for 2 consecutive years, such local educational agency shall develop an improvement plan that will enable the agency to meet such annual measurable objectives and that specifically addresses issues that prevented the agency from meeting such annual measurable objectives.

(b) TECHNICAL ASSISTANCE- During the development of the improvement plan described in subsection (a) and throughout implementation of the plan, the State educational agency shall -

(1) provide technical assistance to the local educational agency; and

(2) provide technical assistance, if applicable, to schools served by the local educational agency that need assistance to enable the local educational agency to meet the annual measurable objectives described in section 1119(a)(2).

(c) ACCOUNTABILITY- After the third year of the plan described in section 1119(a)(2), if the State educational agency determines, based on the reports described in section 1119(b)(1), that the local educational agency has failed to make progress toward meeting the annual measurable objectives described in section 1119(a)(2), and has failed to make adequate yearly progress as described under section 1111(b)(2)(B), for 3 consecutive years, the State educational agency shall enter into an agreement with such local educational agency on the use of that agency's funds under this part. As part of this agreement, the State educational agency -

(1) shall develop, in conjunction with the local educational agency, teachers, and principals, professional development strategies and activities, based on scientifically based research, that the local educational agency will use to meet the annual measurable objectives described in section 1119(a)(2) and require such agency to utilize such strategies and activities; and

(2)(A) except as provided in subparagraphs (B) and (C), shall prohibit the use of funds received under part A of title I to fund any paraprofessional hired after the date such determination is made;

(B) shall allow the use of such funds to fund a paraprofessional hired after that date if the local educational agency can demonstrate that the hiring is to fill a vacancy created by the departure of another paraprofessional funded under title I and such new paraprofessional satisfies the requirements of section 1119(c); and

(C) may allow the use of such funds to fund a paraprofessional hired after that date if the local educational agency can demonstrate -

(i) that a significant influx of population has substantially increased student enrollment; or

(ii) that there is an increased need for translators or assistance with parental involvement activities.

(d) SPECIAL RULE- During the development of the strategies and activities described in subsection (c)(1), the State educational agency shall, in conjunction with the local educational agency, provide from funds allocated to such local educational agency under subpart 2 directly to one or more schools served by such local educational agency, to enable teachers at the schools to choose, with continuing consultation with the principal involved, professional development activities that -

(1) meet the requirements for professional development activities described in section 9101; and

(2) are coordinated with other reform efforts at the schools.

APPENDIX C

Statute -- ESEA *Title I, Part A*, Section 1119

SEC. 1119. QUALIFICATIONS FOR TEACHERS AND PARAPROFESSIONALS.

(a) TEACHER QUALIFICATIONS AND MEASURABLE OBJECTIVES-

(1) IN GENERAL- Beginning with the first day of the first school year after the date of enactment of the No Child Left Behind Act of 2001, each local educational agency receiving assistance under this part shall ensure that all teachers hired after such day and teaching in a program supported with funds under this part are highly qualified.

(2) STATE PLAN- As part of the plan described in section 1111, each State educational agency receiving assistance under this part shall develop a plan to ensure that all teachers teaching in core academic subjects within the State are highly qualified not later than the end of the 2005-2006 school year. Such plan shall establish annual measurable objectives for each local educational agency and school that, at a minimum -

(A) shall include an annual increase in the percentage of highly qualified teachers at each local educational agency and school, to ensure that all teachers teaching in core academic subjects in each public elementary school and secondary school are highly qualified not later than the end of the 2005-2006 school year;

(B) shall include an annual increase in the percentage of teachers who are receiving high-quality professional development to enable such teachers to become highly qualified and successful classroom teachers; and

(C) may include such other measures as the State educational agency determines to be appropriate to increase teacher qualifications.

(3) LOCAL PLAN- As part of the plan described in section 1112, each local educational agency receiving assistance under this part shall develop a plan to ensure that all teachers teaching within the school district served by the local educational agency are highly qualified not later than the end of the 2005-2006 school year.

(b) REPORTS-

(1) ANNUAL STATE AND LOCAL REPORTS-

(A) LOCAL REPORTS- Each State educational agency described in subsection (a)(2) shall require each local educational agency receiving funds under this part to publicly report, each year, beginning with the 2002-2003 school year, the annual progress of the local educational agency as a whole and of each of the schools served by the agency, in meeting the measurable objectives described in subsection (a)(2).

(B) STATE REPORTS- Each State educational agency receiving assistance under this part shall prepare and submit each year, beginning with the 2002-2003 school year, a report to the Secretary, describing the State educational agency's progress in meeting the measurable objectives described in subsection (a)(2).

(C) INFORMATION FROM OTHER REPORTS- A State educational agency or local educational agency may submit information from the reports described in section 1111(h) for the purposes of this subsection, if such report is modified, as may be necessary, to contain the information required by this subsection, and may submit such information as a part of the reports required under section 1111(h).

(2) ANNUAL REPORTS BY THE SECRETARY- Each year, beginning with the 2002-2003 school year, the Secretary shall publicly report the annual progress of State educational agencies, local educational agencies, and schools, in meeting the measurable objectives described in subsection (a)(2).

(c) NEW PARAPROFESSIONALS-

(1) IN GENERAL- Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired after the date of enactment of the No Child Left Behind Act of 2001 and working in a program supported with funds under this part shall have -

(A) completed at least 2 years of study at an institution of higher education;

(B) obtained an associate's (or higher) degree; or

(C) met a rigorous standard of quality and can demonstrate, through a formal State or local academic assessment -

(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

(2) CLARIFICATION- The receipt of a secondary school diploma (or its recognized equivalent) shall be necessary but not sufficient to satisfy the requirements of paragraph (1)(C).

(d) EXISTING PARAPROFESSIONALS- Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired before the date of enactment of the No Child Left Behind Act of 2001, and

working in a program supported with funds under this part shall, not later than 4 years after the date of enactment satisfy the requirements of subsection (c).

(e) EXCEPTIONS FOR TRANSLATION AND PARENTAL INVOLVEMENT ACTIVITIES- Subsections (c) and (d) shall not apply to a paraprofessional -

(1) who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in programs under this part by acting as a translator; or

(2) whose duties consist solely of conducting parental involvement activities consistent with section 1118.

(f) GENERAL REQUIREMENT FOR ALL PARAPROFESSIONALS- Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals working in a program supported with funds under this part, regardless of the paraprofessionals' hiring date, have earned a secondary school diploma or its recognized equivalent.

(g) DUTIES OF PARAPROFESSIONALS-

(1) IN GENERAL- Each local educational agency receiving assistance under this part shall ensure that a paraprofessional working in a program supported with funds under this part is not assigned a duty inconsistent with this subsection.

(2) RESPONSIBILITIES PARAPROFESSIONALS MAY BE ASSIGNED- A paraprofessional described in paragraph (1) may be assigned -

(A) to provide one-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;

(B) to assist with classroom management, such as organizing instructional and other materials;

(C) to provide assistance in a computer laboratory;

(D) to conduct parental involvement activities;

(E) to provide support in a library or media center;

(F) to act as a translator; or

(G) to provide instructional services to students in accordance with paragraph (3).

(3) ADDITIONAL LIMITATIONS- A paraprofessional described in paragraph (1) -

(A) may not provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher consistent with section 1119; and

(B) may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under this part, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school.

(h) USE OF FUNDS- A local educational agency receiving funds under this part may use such funds to support ongoing training and professional development to assist teachers and paraprofessionals in satisfying the requirements of this section.

(i) VERIFICATION OF COMPLIANCE-

(1) IN GENERAL- In verifying compliance with this section, each local educational agency, at a minimum, shall require that the principal of each school operating a program under section 1114 or 1115 attest annually in writing as to whether such school is in compliance with the requirements of this section.

(2) AVAILABILITY OF INFORMATION- Copies of attestations under paragraph (1) -

(A) shall be maintained at each school operating a program under section 1114 or 1115 and at the main office of the local educational agency; and

(B) shall be available to any member of the general public on request.

(j) COMBINATIONS OF FUNDS- Funds provided under this part that are used for professional development purposes may be combined with funds provided under title II of this Act, other Acts, and other sources.

(k) SPECIAL RULE- Except as provided in subsection (l), no State educational agency shall require a school or a local educational agency to expend a specific amount of funds for professional development activities under this part, except that this paragraph shall not apply with respect to requirements under section 1116(c)(3).

(l) MINIMUM EXPENDITURES- Each local educational agency that receives funds under this part shall use not less than 5 percent, or more than 10 percent, of such funds for each of fiscal years 2002 and 2003, and not less than 5 percent of the funds for each subsequent fiscal year, for professional development activities to ensure that teachers who are not highly qualified become highly qualified not later than the end of the 2005-2006 school year.

APPENDIX D

Statute -- IDEA *Title I, Part A*, Section 602

(10) HIGHLY QUALIFIED-

(A) IN GENERAL- For any special education teacher, the term `highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also-

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS- When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor's degree.

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS- When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either--

(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject-matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS- When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) RULE OF CONSTRUCTION- Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA- A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.