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SENATE

{ REPORT  
105-327

**EDUCATION FLEXIBILITY AMENDMENTS OF 1998**

SEPTEMBER 14, 1998.—Ordered to be printed

Mr. JEFFORDS, from the Committee on Labor and Human Resources, submitted the following

**REPORT**

together with

**ADDITIONAL VIEWS**

[To accompany S. 2213]

The Committee on Labor and Human Resources, to which was referred the bill (S. 2213) to allow all States to participate in activities under the Education Flexibility Partnership Demonstration Act, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

**CONTENTS**

|  |      |
|--|------|
|  | Page |
| I. Purpose and summary .....                                 | 1    |
| II. Background and need for the legislation .....            | 2    |
| III. History of the legislation and votes in committee ..... | 3    |
| IV. Explanation of the bill and committee views .....        | 4    |
| V. Cost estimate .....                                       | 5    |
| VI. Regulatory impact statement .....                        | 6    |
| VII. Application of law to the legislative branch .....      | 6    |
| VIII. Section-by-section analysis .....                      | 7    |
| IX. Additional views .....                                   | 9    |
| X. Changes in existing law .....                             | 12   |

**I. PURPOSE AND SUMMARY**

The purpose of S. 2213, as amended by the Senate Committee on Labor and Human Resources, is to authorize the expansion of the Education Flexibility Partnership Demonstration Program. The primary objective is to give all States, that are qualified and choose

to do so, the opportunity to participate in the education flexibility initiative.

S. 2213 amends section 311(e) of the Goals 2000: Educate America Act. All States that participate in the Education Flexibility Partnership Program (which will be referred to as Ed-Flex throughout this report) would be allowed to waive certain Federal regulations and requirements related to elementary and secondary education to the extent it is determined that the regulations and requirements were impeding effective education reform.

Those 12 States currently participating in the Ed-Flex program would be grandfathered into S. 2213. Any new State choosing to participate in the Ed-Flex program must meet the following eligibility requirements: 1) a State must either have an approved Title I plan as described in section 1111(b) of the Improving America's Schools Act or the State must demonstrate substantial progress toward having an approved Title I plan; 2) a State must waive its own State regulations and requirements governing the implementation of Federal education programs; and 3) a State must hold local educational agencies accountable for meeting the educational goals submitted in their local waiver applications.

Under S. 2213, State educational agencies would not be allowed to waive certain requirements such as those pertaining to health, safety, or civil rights. In addition, States cannot waive requirements pertaining to maintenance of effort, comparability of services, nor those requirements that meet the underlying purposes of the programs from which waivers have been sought.

## II. BACKGROUND AND NEED FOR THE LEGISLATION

More than 46 million children attend public schools in the United States. These 46 million youngsters are enrolled in 87,000 public schools.

Federal education funding accounts for only 7 percent of total resources allocated for education. Some experts suggest that despite this rather low percentage in actual Federal education spending, Federal education programs may result in excessive administrative costs. Frank Brogan, Florida's Commissioner of Education, has reported that Florida has 297 State employees overseeing \$1 billion in federally funded education programs and 374 employees to oversee \$7 billion in State education initiatives. In using this comparison, Commissioner Brogan comments that it appears that more individuals are required to oversee Federal programs than State programs—"we at the State and local level feel the crushing burden caused by too many Federal regulations, procedures, and mandates."

S. 2213 is a modest education reform. While giving States flexibility, S. 2213 also demands high accountability standards. Greater accountability is essential to improving our education system.

Under the Ed-Flex program, the United States Department of Education gives States the ability to grant individual school districts temporary waivers from certain Federal requirements that impede State and local efforts to improve education. To be eligible, a State must also waive relevant State education regulations and must hold schools accountable for results. Many of the 12 States presently participating in Ed-Flex have used this flexibility to en-

able school districts to maximize Federal resources for improved student achievement.

Ed-Flex will also enhance program coordination and strengthen planning processes. Through a better allocation of resources, a simultaneous reduction of cumbersome regulations, and the demand for greater accountability, the expansion of the Ed-Flex program will be a positive contributing factor to improving our education system.

### III. HISTORY OF THE LEGISLATION AND VOTES IN COMMITTEE

#### EXECUTIVE SESSION

The Education Flexibility Amendments of 1998, S. 2213 was introduced by Senators Frist and Wyden. Cosponsors are Senators Collins, DeWine, Ford, Glenn, Grassley, Helms, Kempthorne, Kerrey, Roth, Smith of Oregon, Hagel, Levin, McConnell, Hutchison, Domenici, and Bennett.

The Committee on Labor and Human Resources met in executive session on July 22, July 29, and July 30, 1998 to consider S. 2213. Four amendments were unanimously adopted by voice vote.

The first amendment adopted was Senator Frist's amendment package which strengthened State eligibility requirements, removed Adult Education from the list of programs included as a part of S. 2213, changed the scope of those technology programs included in S. 2213, and authorized the continued existence of the Ed-Flex program through 2002.

The second and third amendments the committee adopted were offered by Senator Jeffords. The first amendment created an Oregon Institute of Public Service and Constitutional Studies. The second amendment established the Paul Simon Public Policy Institute.

The fourth amendment adopted by the committee encouraged the Secretary of Education to review the progress that States have made in establishing procedures for increasing the percentage of teachers that are suitably prepared and qualified. This amendment is not intended to be a precondition or requirement for Ed-Flex eligibility.

Two amendments were offered by Senator Reed. The first amendment would have required the Secretary of Education to issue a report about the status of current Ed-Flex States which would have had to be submitted to Congress before additional States would have become eligible for Ed-Flex participation. The second amendment offered by Senator Reed would have required a public notice and a 30 day comment period prior to the request for, or granting of waivers. Both of these amendments were defeated by a 10-8 vote.

Senator Dodd proposed two amendments. The first modified amendment would have increased the authorization levels for the Child Care Block Grant and for 21st Century Community Learning Centers. The second amendment would have authorized a grant program to combat truancy. Both amendments were defeated by a 10-8 vote.

Senator Dodd also offered an amendment on behalf of Senator Harkin which would have provided authority to buy down interest

rates for school infrastructure projects. This amendment was defeated by a voice vote.

Senator Murray offered and withdrew an amendment pertaining to teacher preparation in technology.

Senator Murray offered and withdrew a second amendment to hire 100,000 teachers nationally to reduce class size.

Senator Murray also offered and withdrew a third amendment to include parental involvement in school activities as an allowable use under the Family and Medical Leave Act.

Senator Kennedy offered an amendment to establish educational opportunity zones to assist urban and rural local educational agencies to raise students' academic achievements. The amendment was defeated by a 10–8 vote.

Following the consideration of all amendments, S. 2213, the Education Flexibility Partnership Demonstration Act, was voted out favorably by the committee by a vote of 17 yeas and 1 nay.

#### IV. EXPLANATION OF THE BILL AND COMMITTEE VIEWS

The expansion of Ed-Flex waiver authority will allow for the waiver of statutory and regulatory requirements that hinder implementation of State and local educational improvement plans.

The current Ed-Flex Demonstration Program is limited to 12 States: Colorado, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, New Mexico, Ohio, Oregon, Texas, and Vermont. S. 2213 will expand the availability of the program to any eligible State. In determining the eligibility requirements, the Department of Education was consulted and their views were incorporated into the legislation as passed by the committee. The eligibility requirements mirror those contained in the current law.

The eligibility requirements of Section 3, of S. 2213 reflect those that have been established under Section 1111(b) of the Improving America's Schools Act. The present Title I plan has strict accountability measures that focus on content standards, performance measures, and assessments.

Under S. 2213, a State must either have an approved Title I plan or have made substantial progress toward having an approved plan. The determination of whether a State has made "substantial progress" will largely be up to the discretion of the Secretary. It should be noted, that the committee believes that a State will have to, at the very least, have the content standards required under section 1111(b) of the Improving America's Schools Act in order to be eligible for participation in the Ed-Flex program.

S. 2213 only adds one new covered program to the current list of elementary and secondary education programs included under the Education Flexibility Partnership Demonstration Act. The program is the Technology Challenge Fund formula grant program. In addition, S. 2213 extends the authority for Ed-Flex for 5 years.

Ed-Flex is not a block grant proposal. States cannot pool funds from various Federal education programs and they must ensure that the underlying purposes of the program in question will continue to be met. Ed-Flex simply allows States some relief from the burgeoning mass of bureaucratic Federal regulations and requirements that impede local education reform efforts.

Ed-Flex is a good first step toward granting States and localities increased flexibility in using Federal funds more effectively and efficiently while demanding greater accountability. Our States and localities are the engines of change. The committee believes that the States should be provided with the mechanisms to positively impact and change our education system for the better—Ed-Flex is such a mechanism.

#### V. COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 4, 1998.*

Hon. JAMES M. JEFFORDS,  
*Chairman, Committee on Labor and Human Resources,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2213, the Education Flexibility Amendments of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Josh O'Harra.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

#### *S. 2213.—Education Flexibility Amendments of 1998*

Summary: Title I of S. 2213 would allow all states to participate in the Education Flexibility Demonstration Program (ED-FLEX) that grants participating educational agencies the ability to waive many federal and state education regulations. Currently, only 12 states participate in the demonstration project. Titles II and III would endow the Oregon Institute of Public Service and Constitutional Studies and establish the Paul Simon Public Policy Institute.

CBO estimates that this bill would cost \$6 million in 1999, subject to appropriation of the necessary funds. Because S. 2213 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

S. 2213 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs to state and local governments resulting from enactment of the bill would be incurred voluntarily.

Estimated costs to the Federal Government: The estimated budgetary impact of S. 2213 is shown in the following table.

[By fiscal year, in millions of dollars]

|                              | 1999 | 2000 | 2001 | 2002 | 2003 |
|------------------------------|------|------|------|------|------|
| Authorization under S. 2213: |      |      |      |      |      |
| Authorization levels .....   | 6    | 0    | 0    | 0    | 0    |
| Estimated outlays .....      | 6    | 0    | 0    | 0    | 0    |

The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

Basis of estimate: Title I of this bill would allow state education agencies that participate in ED-FLEX demonstration projects to

waive federal and state regulations deemed unnecessary for educational attainment. CBO's analysis, supported by conversations with staff at the Department of Education, suggests that expanding the eligibility for these demonstration projects to educational agencies in all 50 states would not create any new federal costs.

Title II would authorize a grant of \$3 million to endow the Oregon Institute of Public Service and Constitutional Studies. Similarly, Title III of S. 2213 would authorize \$3 million dollars in 1999 to establish the Paul Simon Public Policy Institute at Southern Illinois University. The legislation would make the funds available for the Paul Simon Public Policy Institute available only if the university matches every \$3 of federal funding with \$1 of its own. For the purposes of this estimate, CBO assumes that the university would be able to provide the \$1 million to match the \$3 million in federal funding available. CBO expects the universities to access these funds promptly, thus resulting in \$6 million in outlays in 1999.

Pay-as-you-go-considerations: None.

Intergovernmental and private-sector impact: S. 2213 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would allow officials in all 50 states to participate in the Education Flexibility Demonstration Program. Twelve states now participate in this program, which gives state officials the authority to temporarily free individual school districts from certain federal requirements. The bill would also authorize appropriations of \$6 million to endow public policy programs at two public universities. Participation in these programs would be voluntary as would any associated costs.

Estimate prepared by: Federal Cost: Josh O'Harra. Impact on State, Local, and Tribal Governments: Marc Nicole. Impact on the Private Sector: Nabeel Alsalam.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

## VI. REGULATORY IMPACT STATEMENT

The committee has determined that S. 2213 may result in some additional paperwork, time, and costs to the Department of Education which would be entrusted with implementation and enforcement of the act. It is difficult to estimate the volume of additional paperwork necessitated by the act, but the committee does not believe it will be significant.

## VII. APPLICATION OF THE LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1, the Congressional Accountability Act (CAA), requires a description of the application of this bill to the legislative branch. S. 2213 amends title 311(e) of the "Goals 2000: Educate America Act." Therefore, S. 2213 does not amend any act that applies to the legislative branch.

## VIII. SECTION-BY-SECTION ANALYSIS

## Title I—Education Flexibility

**Section 101. Short Title.**

Section 101 specifies the short title of the bill, “Education Flexibility Amendments of 1998.”

**Section 102. Findings.**

Section 102 finds that states differ significantly with regard to elementary and secondary education, and that the administrative and funding mechanisms that help schools in one State improve may not prove successful in other States. In addition, some Federal regulations may impede local efforts to improve education. Because State educational agencies are closer to the local schools than the Federal government, they are in the best position to align Federal, State, and local initiatives. The SEA has flexibility to waive certain Federal requirements and related State requirements in 12 States currently, and an expansion of this authority to other states will serve to improve their education systems.

**Section 103. Expansion of the Education Flexibility Partnership Demonstration Act.**

Section 103 expands the Education Flexibility Partnership Demonstration Act by amending section 311(e) of the “Goals 2000: Educate America Act.”

Section 103(a)(1)(a) which previously limited Ed-Flex to 6 States (amended in 1996 to grant 6 more States waiver authority bringing the grand total to 12) is amended to allow all 50 States the opportunity to become an Ed-Flex State. The bill adds Subpart 2 of Part a of Title III, the Technology for Education Act, as another covered program under Ed-Flex authority in addition to the current list of programs for which certain statutory or regulatory requirements may be waived (the list is found in section 311(b) of “Goals”). The bill also references the requirements that cannot be waived in section 14401(c).

Section 103(a)(1)(B) strikes subparagraph (B) and redesignates subparagraph (C) as subparagraph (B).

Section 103(a)(2)(a) amends subparagraph (a) to specify the eligibility of States for participation in the Ed-Flex program by replacing it with the following:

(1) a State must either have an approved Title I plan (have approved content standards, performance measures, and assessments in place as described in section 1111(b) of ESEA), or have made substantial progress towards having an approved Title I plan.

(2) a State must hold local educational agencies accountable for meeting the educational goals submitted in their local applications for waivers.

Subparagraph (B), which requires States to waive their own state regulations and requirements governing the implementation of federal education programs, remains.

Section 103(b), *The Authority to Issue Waivers*, authorizes the Secretary to carry-out the Ed-Flex program through 2003.

Section 103(c), *Accountability*, authorizes the Secretary to review the progress of the State educational agency to determine if it has instituted the proper accountability measures.

Section 103(d), *Transition Rules*, grandfathers the current Ed-Flex States.

Title II—Oregon Institute of Public Service and Constitutional Studies

Title II authorizes appropriation of funds to award a grant to Portland State University in Portland, Oregon for the creation and support of the Oregon Institute of Public Service and Constitutional Studies at the Mark O. Hatfield School of Government at Portland State University. The Institute shall further the knowledge and understanding of students about public service, the United States Government, and the Constitution of the United States, and will increase awareness of the importance of public service.

Title III—Paul Simon Public Policy Institute

Title III authorizes appropriation of funds to award a grant to Southern Illinois University for the creation and support of the Paul Simon Public Policy Institute. This Institute will engage in research, analysis, debate, and policy recommendations affecting world hunger, mass media, foreign policy, education, and employment.

## IX. ADDITIONAL VIEWS OF SENATOR DODD

Although I supported S. 2213, the Education Flexibility Amendments of 1998, I continue to have strong concerns regarding this legislation as well as the committee's consideration of it.

S. 2213 was introduced by Senator Frist and Senator Wyden a little over a month before the committee took up the bill. The committee held no hearings on this important bill and little notice was provided to the committee that it would be considered. The accountability provisions of the bill were substantially strengthened in the days immediately before the markup; however, the committee had little opportunity to examine the fundamentals of this important initiative.

The legislation extends the education flexibility demonstration program to all 50 states. With this extension, Governors would have broad new authority to restructure some of the key federal elementary and secondary education programs, such as Title I and the Safe and Drug Free Schools and Communities Program. And yet, we have no evidence that the current demonstration, limited to 12 states, has resulted in any increase in student achievement. I supported the original enactment of this program, despite my concerns about ceding waiver authority for federal laws to the states. However, the original demonstration was limited to six states, then 12, and was to be carefully evaluated for its impact. It concerns me that the committee has moved forward to expand this to all 50 states in the absence of this evaluation. This is particularly troubling given that the committee will take up the reauthorization of the Elementary and Secondary Education Act next year.

As part of this critical reauthorization, we will conduct a comprehensive review, including hearings, of the many federal efforts to improve our nation's schools and the interaction between these efforts and those of state and local governments. The Education Flexibility Demonstration program should rightly be considered in this context. It is my expectation that we will continue to address the appropriate balance between accountability and flexibility raised by S. 2213 as well as other critical needs of our students and schools during the reauthorization process.

During the committee's mark up, several strong initiatives were introduced to support the pressing needs of our schools. I offered two amendments—one to support local communities in meeting the needs of students during non-school hours and a second to help schools address the growing problem of truancy. These two initiatives are desperately needed by parents and schools and are deserving of the committee's attention. I regret we have been unable to move such clear, simple and compelling legislation.

CHRISTOPHER J. DODD.

## ADDITIONAL VIEWS OF SENATOR REED

S. 2213, the Education Flexibility Amendments of 1998, will expand the current twelve state education flexibility (Ed-Flex) demonstration program to all fifty states. While I supported S. 2213—primarily because the substitute version contained stronger accountability provisions than the original version of the bill—I have serious concerns about this legislation.

The Labor Committee acted on this legislation without the benefit of research on the effectiveness of Ed-Flex. Had the formal hearing process been observed with respect to S. 2213, the Committee would have had the data and perspective to properly assess the expansion of the Ed-Flex demonstration program. Moreover, there have only been two reports issued by the Department of Education on Ed-Flex—an October 1997 waivers report and an April 1998 Goals 2000 report—which provide very limited information on how a few of the twelve Ed-Flex states are administering their waiver authority.

Indeed, these preliminary reports fail to provide any data on student achievement gains in these states, let alone any information that demonstrates an increase in student achievement due to the waiver authority provided by the Ed-Flex program.

Student achievement gains should be the basis for Ed-Flex expansion or any education policy. Until we have student achievement data and fully understand the impact of Ed-Flex, it is unwise to expand this authority—intended to be a limited demonstration program—to the fifty states. For this reason, I offered an amendment during the markup to require the Secretary of Education to report on data collected on student achievement gains in the twelve current Ed-Flex demonstration states before the program could be expanded. Although this amendment failed, I will continue to pursue this matter as S. 2213 moves to the floor, and next year during the reauthorization of the Elementary and Secondary Education Act—the proper vehicle for the consideration of Ed-Flex expansion.

During the markup, I offered another amendment to bolster the accountability provisions included in the bill. My amendment would have required an open process to inform the public of the waivers sought by a local educational agency (LEA) and offered an opportunity for public comment on the waiver request.

Members of the public, including individuals directly impacted by waiver requests, such as parents, students, and teachers, should be able to easily learn of such requests when reading their local newspaper just as they learn about other local issues. These individuals should also be provided with a description of how the proposed waiver will improve student performance—the intended goal of education flexibility. And, lastly, to ensure that all voices are heard, these individuals should be able to provide comments to the LEA and the state educational agency (SEA) before the issuance of

the waiver. This is a common sense provision, which should be incorporated into S. 2213 prior to floor consideration.

Lastly, I am disappointed that the Labor Committee did not take the opportunity to act on amendments offered by my Democratic colleagues to reduce class size, modernize our public schools, and provide students with after school care—reforms that are backed by research to strengthen our schools and boost the achievement of students.

I hope that these concerns will be resolved before S. 2213 is taken to the floor. I look forward to working with the sponsors of S. 2213 on this matter and with the Committee to pass proven and needed education reforms.

JACK REED.

X. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

GOALS 2000: EDUCATE AMERICA ACT

\* \* \* \* \*

**TITLE III—STATE AND LOCAL EDUCATION SYSTEMIC IMPROVEMENT**

**SEC. 301. [20 U.S.C. 5881] FINDINGS.**

The Congress finds that—

\* \* \* \* \*

**SEC. 311. [20 U.S.C. 5891] WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.**

(a) **WAIVER AUTHORITY.—**

(1) **IN GENERAL.—**\* \* \*

\* \* \* \* \*

(e) **FLEXIBILITY DEMONSTRATION.—**

(1) **SHORT TITLE.—**The subsection may be cited as the “Education Flexibility Partnership Demonstration Act”.

(2) **PROGRAM AUTHORIZED.—**

**[(A) IN GENERAL.—**The Secretary may carry out an education flexibility demonstration program under which the Secretary authorizes not more than 6 State educational agencies serving eligible States to waive statutory or regulatory requirements applicable to 1 or more programs or Acts described in subsection (b), or other than requirements described in subsection (c), for the State educational agency or any local educational agency or school within the State.]

*(A) IN GENERAL.—The Secretary may carry out an education flexibility demonstration program under which the Secretary authorizes a State educational agency that serves an eligible State to waive statutory or regulatory requirements applicable to 1 or more programs or Acts described in subsection (b) or 1 or more programs described in subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (except section 3136 of such Act), other than requirements described in subsection (c) of this Act and section 14401(c) of the Elementary and Secondary*

*Education Act of 1965, for the State educational agency or any local educational agency or school within the State.*

**[(B) AWARD RULE.—**In carrying out subparagraph (A), the Secretary shall select for participation in the demonstration program described in subparagraph (A) three State educational agencies serving eligible States that each have a population of 3,500,000 or greater and three State educational agencies serving eligible States that each have a population of less than 3,500,000 determined in accordance with the most recent decennial census of the population performed by the Bureau of the Census.]

**[(C)] (B) DESIGNATION.—**Each eligible State participating in the demonstration program described in subparagraph (A) shall be known as an “Ed-Flex Partnership State”.

(3) **ELIGIBLE STATE.—**For the purpose of this subsection the term “eligible State” means a State that—

**[(A) has developed a State improvement plan under section 306 that is approved by the Secretary; and]**

**(A)(i) has—**

*(I) developed and implemented the challenging State content standards, challenging State student performance standards, and aligned assessments described in section 1111(b) of the Elementary and Secondary Education Act of 1965, including the requirements of that section relating to disaggregation of data, and for which local educational agencies in the State are producing the individual school performance profiles required by section 1116(a) of such Act; or*

*(II) made substantial progress, as determined by the Secretary, toward developing and implementing the standards and assessments, and toward having local educational agencies in the State produce the profiles, described in subclause (I); and*

*(ii) holds local educational agencies and schools accountable for meeting the educational goals described in the local applications submitted under paragraph (5), and for taking corrective actions, consistent with section 1116 of the Elementary and Secondary Education Act of 1965, for the local educational agencies that do not meet the goals; and*

\* \* \* \* \*

**(8) AUTHORITY TO ISSUE WAIVERS.—***Notwithstanding any other provision of law, the Secretary is authorized to carry out the education flexibility demonstration program under this subsection for each of the fiscal years 1999 through 2003.*

**(f) ACCOUNTABILITY.—**In deciding whether to extend a request for a waiver under subsection (a)(1), or a State educational agency’s authority to issue waivers under subsection (e), the Secretary shall review the progress of the State educational agency, local educational agency, or school affected by such waiver or authority to determine if such agency or school has made progress toward achieving the desired results described in the application submitted pursuant to subsection (a)(2)(B)(iii) or (e)(5)(A)(ii). In the case of deciding whether to extend a State educational agency’s authority to

issue waivers under subsection (e), the Secretary also shall review the progress of the State educational agency to determine if such agency—

*(1) has established procedures for increasing the percentage of elementary school and secondary school teachers in the State who have demonstrated, by traditional or alternative routes, the subject matter knowledge and pedagogical skill necessary to provide effective instruction in the content area or areas in which the teachers provide instruction; and*

*(2) has decreased the percentage of elementary school and secondary school teachers teaching in high poverty elementary schools and secondary schools who do not demonstrate such knowledge and skills.*

\* \* \* \* \*

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