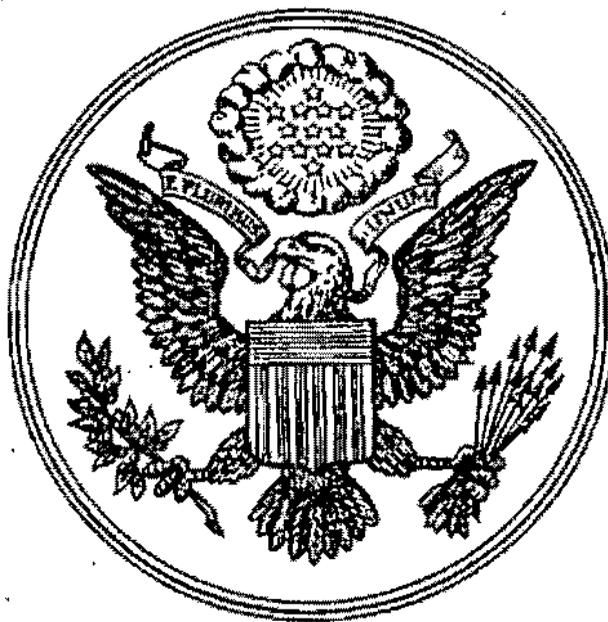


A History of the
U.S. Department of Education
During the Clinton Administration
1993-2001



Prepared for the Clinton Administration History Project
Washington, DC
2000
VOLUME 2

A BILL

TITLE IV -- ADDITIONAL AMENDMENTS TO THE GENERAL EDUCATION PROVISIONS ACT

PART A--APPLICABILITY OF THE GENERAL EDUCATION PROVISIONS ACT

TITLE; APPLICABILITY

SEC. 401. Section 400 of the General Education Provisions Act (20 U.S.C. 1221 et seq.; hereafter in this title referred to as "the Act") is amended to read as follows:

"TITLE; APPLICABILITY; DEFINITIONS; APPROPRIATIONS

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

"(b) (1) Notwithstanding section 427 of the Department of Education Organization Act, and except as otherwise provided, the provisions of this title apply to each applicable program of the Department of Education.

"(2) Except as otherwise provided, this title does not apply to any contract made by the Department of Education.

"(c) As used in this title, the term--

"(1) 'applicable program' means any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. The term includes each program for which the Secretary (or the Department) has administrative responsibility under the Department of Education Organization Act or under statutes effective after the effective date of that Act;

"(2) 'applicable statute' means--

"(A) the Act or the title, part, section, or any

into this have an signature (All these any programs for which the Department has administrative responsibility)

other subdivision of an Act, as the case may be, that authorizes the appropriation for an applicable program;

"(B) this title; and

"(C) any other statute that by its terms expressly prescribes the administration of an applicable program;

"(3) 'Department' means the Department of Education;
and

"(4) 'Secretary' means the Secretary of Education.

"(d) Nothing in this title shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program.

"(e) There are authorized to be appropriated for any fiscal year such sums as may be necessary to carry out this title."

REPEAL

SEC. 402 Section 400A of the Act is repealed.

PART B--THE DEPARTMENT OF EDUCATION

NEW HEADING FOR PART A

SEC. 410. The heading for Part A of the Act is amended to read as follows: "PART A--FUNCTIONS OF THE DEPARTMENT OF EDUCATION".

GENERAL AUTHORITY OF THE SECRETARY

SEC. 411. (a) The heading for section 408 of the Act is amended to read as follows: "GENERAL AUTHORITY OF THE SECRETARY".

(b) Section 408 is further amended--

(1) by amending subsection (a) to read as follows:

"(a) The Secretary, in order to carry out functions otherwise vested in him by law or by delegation of authority pursuant to law, and subject to limitations as may be otherwise imposed by law, is authorized to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.";

(2) in subsection (b)--

(A) by striking out "administrative head of an education agency" and inserting in lieu thereof "Secretary";

(B) by striking out "under the authority of this section"; and

(C) by striking out "which identify" in the second sentence thereof and inserting in lieu thereof "that identifies"; and

(3) by striking out subsections (c) and (d).

OFFICE OF NONPUBLIC EDUCATION

SEC. 412. Section 409 of the Act is amended to read as follows:

For years, we have been calling it The Office of Private Ed -
OFFICE OF NONPUBLIC EDUCATION *Why go back to Non public*

"SEC. 409. Subject to the provisions of section 413 of the Department of Education Organization Act, there is established in the Department an Office of Nonpublic Education to ensure the maximum participation of nonpublic school students in all applicable programs for which such children are eligible."

*Non public
Ed
like a
euphemism
for Private,
anyway!*

REPEALS

SEC. 413. Sections 401, 402, 403, 406B, 406C, and 407 of the Act are repealed.

PART C--APPROPRIATIONS AND EVALUATIONS

ADVANCE FUNDING

SEC. 420. Section 411 of the Act is amended by striking out "for education," and inserting in lieu thereof a comma.

AVAILABILITY OF APPROPRIATIONS

SEC. 421.(a) The heading for section 412 of the Act is amended to read as follows: "AVAILABILITY OF APPROPRIATIONS ON ACADEMIC-OR SCHOOL-YEAR BASIS; ADDITIONAL PERIOD FOR OBLIGATION OF FUNDS".

(b) Section 412 is further amended--

(1) in subsection (a), by striking out "to educational agencies or institutions";

(2) by amending subsection (b)(1) to read as follows:

"(b) (1) (A) Notwithstanding any other provision of law, unless enacted in express limitation of this subsection, any funds from appropriations to carry out any applicable State formula grant program that are not obligated by a recipient by the end of the [fiscal year for which such funds were appropriated] shall remain available for obligation by such recipient during the succeeding fiscal year.

"(B) As used in this subsection, the term applicable State formula grant program means an applicable program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.";

(3) in subsection (b) (2) --

(A) by striking out "applicable program" and inserting in lieu thereof "applicable State formula grant program";

(B) by striking out "and expenditure" and "and expended"; and

(C) in subparagraph (B), by striking out "educational agencies or institutions" and inserting in lieu thereof "recipients";

(4) in subsection (c), by striking out "section 3679 (d) (2) of the Revised Statutes" and inserting in lieu thereof "31 U.S.C. 1513(b) (1)".

CONTINGENT EXTENSION OF PROGRAMS

SEC. 422. Section 414 of the Act is amended to read as follows:

In the past, people have interpreted program authorizations with "sunset" provisions — e.g., Follow Through — as not covered by 414 — would this clarify the way they are covered?

"CONTINGENT EXTENSION OF PROGRAMS

"SEC. 414. (a) The authorization of appropriations for, or duration of, an applicable program shall be automatically extended for one additional fiscal year unless Congress, in the regular session that ends prior to the terminal fiscal year of such authorization or duration--

"(1) has passed legislation that becomes law and extends, or has formally rejected legislation that would have extended, the authorization or duration of such program; or

"(2) approves a resolution, by action of either the House of Representatives or the Senate, stating that this section shall not apply to such program.

"(b) The amount authorized to be appropriated for the period of automatic extension of an applicable program under subsection (a) shall not exceed the amount that was authorized to be appropriated for that program during its terminal fiscal year.

"(c) If the Secretary is required, in the terminal fiscal year of an applicable program, to carry out certain acts or make certain determinations that are necessary for the continuation of such program, such acts or determinations *shall ~~not~~ be undertaken?* [shall be required] during the period of automatic extension under subsection (a)."

Instead of these amendments, why don't we get rid of the AER? Preparing it is a substantial burden on the Department, and it ~~is~~ occupies a high ranking in the pantheon of worthless government documents.

SEC. 423. Section 417(a) of the Act is amended to read as follows:

"(a) Not later than March 31 of each year, the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual evaluation report on the effectiveness of applicable programs during the preceding fiscal year in achieving their legislated purposes. Such report shall--

"(1) contain program profiles that include legislative citations, multi-year funding histories, and legislated purposes;

"(2) contain recent evaluation information on the progress being made toward the achievement of program objectives, including evaluation information on the costs and benefits of the applicable programs being evaluated;

"(3) contain selected significant program activities, such as initiatives for program improvement, regulations, and program monitoring; and

"(4) list the principal analyses and studies supporting the major conclusions in the report."

TECHNICAL AMENDMENTS

SEC. 424. (a) Section 415 of the Act is amended by striking out "Commissioner" and inserting in lieu thereof "Secretary".

(b) Sections 416 and 419(c) of the Act are amended by

striking out "section 400(d)" each place it appears and inserting in lieu thereof "section 400(f)".

REPEAL

SEC. 425. Section 413 of the Act is repealed.

PART D--ADMINISTRATION OF EDUCATION PROGRAMS

JOINT FUNDING OF PROGRAMS

SEC. 430. (a) The heading for section 421A of the Act is amended to read as follows: "JOINT FUNDING OF PROGRAMS".

(b) Section 421A of the Act is further amended--

(1) by striking out subsections (a) and (b);

(2) by inserting a new subsection (a) immediately before subsection (c) to read as follows:

"(a) The Secretary is authorized to enter into arrangements with other Federal agencies jointly to carry out particular projects of common interest, and to transfer to such agencies funds appropriated under any applicable program, and to receive funds from such agencies, for this purpose. Funds so transferred or received shall be used only in accordance with the statutes authorizing the appropriation of such funds and the statutes appropriating such funds, and shall be made available only to parties eligible to receive such funds under such statutes.

[Needs discussion with DBAL]

(3) by redesignating subsection (c) as subsection (b);

(4) in paragraph (1) of subsection (b) (as redesignated in paragraph (3))--

(A) in subparagraph (C)--

(i) in the introductory language thereof, by striking out "or the other procedure which" and inserting in lieu thereof "or other procedure that";

(ii) in clause (i), by striking out the comma at end thereof and inserting in lieu thereof a semicolon;

(iii) in clause (ii), by striking out the comma at the end thereof and inserting in lieu thereof a semicolon and "or";

(iv) in clause (iii), by striking out the comma and "or" at the end thereof and inserting in lieu thereof a period; and

(v) by striking out clause (iv); and

(B) by adding at the end thereof the following new subparagraph:

"(D) (i) The Secretary may require the submission of joint applications under two or more applicable programs under which awards are made on a competitive basis, and may jointly review and approve such applications separately from other applications under such programs, when the Secretary determines that such joint awards are necessary to address a special need consistent with the purposes and authorized activities of each such program. Any applicant for such a joint

award must meet the eligibility requirements of each such program.

"(ii) The Secretary may require applicants under an applicable program under which awards are made on a competitive basis to submit, in addition, an application under a competitive program administered by another Federal agency, and may review and approve such applications separately from other applications, when the Secretary and the head of such other agency determine that such awards are necessary to address a special need consistent with the purposes and authorized activities of each such program. Any applicant for such an award must meet the eligibility requirements of each such program."; and

(5) in subsection (b)(4), by striking out "Commissioner" and inserting in lieu thereof "Secretary".

REVIEW OF APPLICATIONS

SEC. 431. Section 425 of the Act is amended--

(1) in subsection (a)--

(A) by striking out "Commissioner" and inserting in lieu thereof "Secretary";

(B) by striking out "and in the case of the program provided for in title I of the Elementary and Secondary Education Act of 1965,";

(C) in the third sentence thereof, by inserting a comma after "the hearing"; and

(D) in the fourth sentence thereof--

(i) by striking out the comma after "guidelines"; and

(ii) by inserting a comma after "program";

(2) by striking out subsections (b) and (d);

[subsections (b) and (d) provide for appeals by LEAs to the Secretary in certain cases; should we repeal?] and

(3) by redesignating subsection (c) as subsection (b).

TECHNICAL ASSISTANCE

SEC. 432. Section 426 of the Act is amended--

(1) by striking out subsection (a);

(2) by striking out "Commissioner" and "Commissioner's"

each place they appear and inserting in lieu thereof "Secretary" and "Secretary's", respectively;

(3) in subsection (b), by inserting a comma after "subsection" in the last sentence thereof;

(4) in subsection (c), by striking out "and the Director of the National Institute of Education"; and

(5) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

USE OF FUNDS WITHHELD

SEC. 433. Section 428 of the Act is amended--

(1) by inserting the subsection designation "(a)" after "428.";

Do we really need Section 426 at all? Are any of our activities specifically authorized by that section? Above

(2) by revising subsection (a) (as redesignated in paragraph (1)) to read as follows:

"(a) At any time that the Secretary makes an allotment or reallocation to any State, under any applicable program, the Secretary shall reduce such allotment or reallocation by such amount as the Secretary determines it would have been reduced, had the data on which the allotment or reallocation is based excluded all data relating to local educational agencies of the State which on the date of the Secretary's action are ineligible to receive the Federal financial assistance involved because of failure to comply with 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, or the Age Discrimination Act of 1975.";

(C) by striking out the second sentence; and

(3) by adding immediately after subsection (a) (as redesignated in paragraph (1)), the following new subsection:

"(b) The Secretary may use any funds withheld under subsection (a)--

"(1) to increase the allotments of other local educational agencies within the State, or the allotments of all States, in accordance with the statutes governing the program; or

"(2) for grants to local educational agencies of that State in accordance with section 405 of the Civil Rights Act of 1964, or for any other program administered by the .

Department that is designed to enhance equity in education or redress discrimination on the basis of race, national origin, sex, age, or disability."

REGULATIONS

SEC. 434. Section 431 of the Act is amended to read as follows:

Again - How would there be one but not the other

"REGULATIONS

"SEC. 431. (a) For the purpose of this section, the term 'regulation' means any generally applicable rule, regulation, guideline, interpretation, or other requirement prescribed by the Secretary or the Department and that has legally binding effect in connection with, or affecting, the provision of financial assistance under any applicable program.

"(b) Regulations issued by the Secretary or the Department shall contain, immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority on which such provision is based.

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

"(d) The Secretary shall promulgate regulations in accordance with chapter 5 of title 5, United States Code, except that the exemption in section 553(a)(2) of such chapter for

public property, loans, grants, and benefits shall apply only to regulations that govern a particular grant competition, where the Secretary determines that the application of such exception is necessary to ensure the timely award of grants or otherwise meet the objectives of the relevant applicable program. [Note: This exception would change current practice by making Section 553 rulemaking procedures inapplicable to the described category of rules.]

"(e) Following the enactment of any Act or any part of any Act affecting the administration of any applicable program, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a schedule in accordance with which the Secretary plans to promulgate final regulations that the Secretary determines are necessary to implement such Act or part of such Act. If the Secretary, for good cause, later determines that the Secretary cannot comply with such a schedule, the Secretary shall notify such committees of the reasons for such finding and submit a new schedule.

"(f) Concurrently with the publication of any final regulations, the Secretary shall transmit a copy of such final regulations to the Speaker of the House of Representatives and the President of the Senate."

AUTHORITY TO VEST TITLE TO EQUIPMENT

SEC. 435. Part C of the Act is further amended by inserting the following new section immediately after section 436:

*AUTHORITY TO VEST TITLE TO EQUIPMENT

*SEC. 436A. (a) The Secretary is authorized, whenever the Secretary determines that it would be in the public interest--

"(1) to vest title to equipment in a State or local educational agency, a nonprofit institution of higher education, or a nonprofit organization whose primary purpose is the conduct of research, that purchased such equipment with funds derived from a grant, contract, or cooperative agreement awarded by the Secretary under any applicable program; or

"(2) to waive accountability to the United States for the equipment specified in paragraph (1).

"(b) The Secretary, in exercising the authority under subsection (a), may waive accountability for, or vest title to equipment in such agency, institution, or organization, without further obligation to the United States or on such terms as the Secretary deems appropriate, and without regard to the date such equipment was purchased."

RECORDS

SEC. 436. Section 437 of the Act is amended--

(1) in subsection (a)--

(A) by striking out "grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency)" and inserting in lieu thereof "grant, subgrant, cooperative agreement, or loan";

(B) by inserting "financial or programmatic" immediately before "audit."; and

(C) by striking out the last sentence thereof; and

(2) in subsection (b), by striking out "to any records of a recipient which may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements" and inserting in lieu thereof "to any records currently maintained by a recipient that may be related, or pertinent to, grants, subgrants, cooperative agreements, or loans".

TECHNICAL AMENDMENTS

SEC. 437. (a) The heading for Part C of the Act is amended by striking out "COMMISSIONER OF EDUCATION" and inserting in lieu thereof "SECRETARY".

(b) Section 422 of the Act is amended--

(1) by striking out "Commissioner", "Commissioner's", and "Office of Education" each place they appear and inserting in lieu thereof "Secretary", "Secretary's", or "Department" respectively; and

(2) in subsection (a)(4), by striking out "(as set forth in section 403 of this Act)" and inserting in lieu thereof

"(as set forth in section 102 of the Department of Education Organization Act)".

(c) Section 427 of the Act is amended--

(1) by striking out "Commissioner" and inserting in lieu thereof "Secretary"; and

(2) in the second sentence thereof, by inserting "is made" after "such determination".

(d) Section 429 of the Act is amended by striking out "Commissioner" and "Office of Education" and inserting in lieu thereof "Secretary" and "Department", respectively.

(e) Section 430 of the Act is amended by striking out "Commissioner" each place it appears and inserting in lieu thereof "Secretary".

(f) (1) The heading of section 434 of the Act is amended by striking out "EDUCATIONAL".

(2) Section 434 of the Act is amended --

(A) by striking out "Commissioner" each place it appears and inserting in lieu thereof "Secretary"; and

(B) by inserting "(C)" before the last sentence and by deleting "paragraph (3)" in such sentence and inserting in lieu thereof "subsection (b)".

(g) Section 435 of the Act is amended--

(1) by striking out "Commissioner" each place it appears and inserting in lieu thereof "Secretary"; and

(2) in subsection (a)--

(A) by striking out the comma after "submits a

plan"; and

(B) by striking out "(subject, in the case of programs under chapter 1 and chapter 2 of title I of the Elementary and Secondary Education Act of 1965)".

(h) Section 436 of the Act is amended--

(1) in subsection (a), by striking out "that local education agency" and inserting in lieu thereof "that local educational agency"; and

(2) in subsection (b)--

(A) in paragraph (2), by inserting a comma after "program"; and

(B) in paragraph (4), by striking out "Commissioner" each place it appears and inserting in lieu thereof "Secretary".

(i) Section 438 of the Act is amended--

(1) in subsection (a)(4)(B)(ii) by striking out the period and inserting a semicolon.

(2) in subsection (b)--

(A) in paragraph (1)(C), by striking out "(iii) an administrative head of an education agency (as defined in section 408(c)), or (iv)" and inserting in lieu thereof "or (iii)";

(B) in paragraph (1)(H) by striking out "1954" and inserting in lieu thereof "1986";

(C) in paragraph (3)--

(i) by striking out "(C) an administrative head of an education agency or (D)" and inserting

in lieu thereof "or (C)"; and

(ii) by striking out "education, program" and inserting in lieu thereof "education programs";

(3) in subsection (d), by inserting a comma after "education";

(4) in subsection (f) --

(A) by striking out "The Secretary, or an administrative head of an education agency," and inserting in lieu thereof "The Secretary"; and

(B) by striking out "provisions of this section" after "enforce";

(C) by striking out "according to the provisions of" and inserting in lieu thereof "in accordance with"; and

(D) by striking out "the provisions of" after "with."

(5) in subsection (g) --

(A) by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Education"; and

(B) by striking out "the provisions of".

REPEALS

SEC. 438. Sections 421, 423, 424, and 426A of the Act are repealed.

PART E--ADVISORY COMMITTEES

DEFINITIONS

SEC. 440. (a) The heading for Part D of the Act is amended by striking out "COUNCILS" and inserting in lieu thereof "COMMITTEES".

(b) Section 441 of the Act is amended--

(1) by amending paragraph "(1) to read as follows:

"(1) 'advisory committee'--

(A) means any committee, board, commission, council, or other similar group --

(i) established or organized pursuant to any applicable statute, or

(ii) established under the authority of section 442, but

(B) does not include State advisory committees or commissions established pursuant to any such statute:";

(2) in paragraph (2), by striking out "council" each place it appears and inserting in lieu thereof "committee";

(3) by amending paragraph (3) to read as follows:

"(3) 'nonstatutory advisory committee' means an advisory committee that is established under the authority of section 442:";

(4) in paragraph (4), by striking out "Presidential advisory council" and "statutory advisory council" and inserting in lieu thereof "Presidentially appointed advisory committee" and "statutory advisory committee", respectively;

(5) in paragraph (5)--

(A) by striking out "Secretarial advisory council" and "statutory advisory council" and inserting in lieu thereof

"Secretariially-appointed advisory committee" and "statutory advisory committee", respectively; and

(B) by striking out the semicolon at the end thereof and inserting in lieu thereof a period; and

(6) by striking out paragraphs (6) and (7).

AUTHORIZATION

SEC. 441.(a) The heading for section 442 of the Act is amended by striking out "COUNCILS" and inserting in lieu thereof "COMMITTEES".

(b) Section 442 of the Act is amended--

(1) in subsection (a)--

(A) by striking out the subsection designation "(a)"; and

(B) by striking out "Commissioner", "councils", and "Office of Education" and inserting in lieu thereof "Secretary", "committees", and "Department of Education", respectively; and

(2) by striking out subsection's (b) and (c).

COMMITTEE MEMBERSHIP AND REPORTS

SEC. 442.(a) The heading for section 443 of the Act is amended by striking out "COUNCILS" and inserting in lieu thereof "COMMITTEES".

(b) Section 443 of the Act is amended--

(1) in subsection (a)--

(A) by striking out "council" each place it appears and inserting in lieu thereof "committee";

(B) by striking out "the provisions of";

(C) in paragraph (1), by inserting a comma after "which"; and

(D) by amending paragraph (2) and the language following that paragraph to read as follows:

"(2) shall make an annual report of its activities, findings, and recommendations to the Congress not later than December 31 for the preceding fiscal year, which shall contain a list of the names and affiliations of the advisory committee's members, a description of the functions of the advisory committee, and a statement of the dates of the meetings of the advisory committee, and such report shall also be submitted with the report required under section 426 of the Department of Education Organization Act (20 U.S.C. 3486).";

(2) by amending subsection (b) to read as follows:

"(b) Members of statutory advisory committees shall continue to serve, regardless of any other provision of law limiting their terms, until other members are appointed."; and

(3) by adding at the end thereof the following new subsection:

"(c) The Secretary shall not serve as a member of any

statutory advisory committee."

COMPENSATION

SEC. 443. (a) The heading for section 444 of the Act is amended by striking out "COUNCILS" and inserting in lieu thereof "COMMITTEES".

(b) Section 444 of the Act is amended--

(1) by striking out "councils" and "council" each place they appear and inserting in lieu thereof "committees" and "committee", respectively;

(2) by striking out "Commissioner" and inserting in lieu thereof "Secretary"; and

(3) by striking out "including travel time,".

STAFF AND TECHNICAL ASSISTANCE

SEC. 444. Section 445 of the Act is amended--

(1) in subsection (a), by striking out "Presidential advisory councils" and inserting in lieu thereof "Presidentially appointed advisory committees";

(2) in subsection (b) --

(A) by striking out "Assistant Secretary" and "Secretarial and Assistant Secretary's advisory councils" and inserting in lieu thereof "Secretary" and "Secretarially appointed advisory committees", respectively; and

(B) by striking out "function" and inserting in lieu thereof "functions".

(3) in subsection (c), by striking out "Assistant Secretary, Presidential advisory councils" and inserting in lieu thereof "Secretary, ^{of} Presidentially appointed advisory committees"; and

(4) in subsection (d)--

(A) by striking out "council" and inserting in lieu thereof "committee"; and [change "that which" to "that"]?

(B) by striking out everything that follows "with respect to, the competitive service" through the end thereof and inserting in lieu thereof a period.

MEETINGS

SEC. 445. (a) The heading for section 446 of the Act is amended by striking out "COUNCILS" and inserting in lieu thereof "COMMITTEES".

(b) Section 446 of the Act is amended by striking out "council" and "councils" each place they appear and inserting in lieu thereof "committee" or "committees", respectively.

(c) Section 446(a) of the Act is further amended--

(1) by striking out "statutory";

(2) by inserting "fiscal" immediately after "two times each"; and

(3) by striking out the last sentence therein.

AUDITS AND REVIEW

SEC. 446. (a) The heading for section 447 of the Act is

amended by striking out "COUNCIL" and inserting in lieu thereof "COMMITTEE".

(b) Section 447 of the Act is amended--

(1) in subsection (a), by striking out "council", "Commissioner", "councils", and "which" and inserting in lieu thereof "committee", "Secretary", "committees", and "that", respectively; and

(2) in subsection (b), by striking out "council" and "which" and inserting in lieu thereof "committee" and "that", respectively.

REPORTS BY THE SECRETARY

SEC. 447. Section 448 of the Act is amended to read as follows:

"REPORTS BY THE SECRETARY

"SEC. 448. (a) The Secretary shall submit a report on the activities of the advisory committees that are subject to this part, which shall include a statement on all advisory committees created under the authority of section 442. Such report shall be submitted as part of the Secretary's annual report under section 426 of the Department of Education Organization Act.

"(b) If the Secretary determines that a statutory advisory committee is not needed, or that the functions of two or more statutory advisory committees should be combined, the Secretary shall prepare a report recommending that such advisory committee

be abolished or that such functions be combined. The Secretary is authorized to abolish such advisory committee or combine the functions of two or more advisory committees as recommended in such report upon the expiration of a period of ninety days after the submission of such report to the Committee on Labor and Human Resources of the Senate and to the Committee on Education and Labor of the House of Representatives."

RELATION TO OTHER LAWS

SEC. 448. Section 449 of the Act is amended--

(1) by striking out subsection (a); and

(2) in subsection (b)--

(A) by striking out the subsection designation "(b)";

(B) by striking out "The provisions of subsections" and inserting in lieu thereof "Subsections"; and

(C) by striking out "Presidential advisory councils" and inserting in lieu thereof "Presidentially-appointed advisory committees".

PART F--CONFORMING AMENDMENTS

AND EFFECTIVE DATE

[To be revised]

CONFORMING AMENDMENTS TO OTHER ACTS

SEC. 450. (a) The Rehabilitation Act of 1973 is amended--

(1) by repealing sections 4 and 9; and

(2) in section 100, by striking out subsection (d).

(b) Section 7036 of the Bilingual Education Act is amended by striking out "section 405(b)(2)(C)" and inserting in lieu thereof "section 405(b)(3)(B)".

(c) Section 5342(d) of the Indian Education Act of 1988 is amended by striking out "section 400(d)" and inserting in lieu thereof "section 400(f)".

(d) Section 491(b) of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended by striking out the last sentence thereof.

(e) Section 111 of the Education for Economic Security Act (20 U.S.C. 3921) is amended by striking out "section 432 of the General Education Provisions Act" and inserting in lieu thereof "section 103 of the Department of Education Organization Act".

[Needs updating]

EFFECTIVE DATE

SEC. 451. [To be supplied]

* * *

JUL - 6 1988

DRAFT

THE GENERAL EDUCATION PROVISIONS ACT AMENDMENTS OF 1993

Section-by-Section Analysis

TITLE IV--APPLICABILITY OF THE GENERAL EDUCATION PROVISIONS ACT

Section 401. Section 401 of the bill would amend section 400 of the General Education Provisions Act (20 U.S.C. 1221 et seq.; hereafter referred to as "GEPA" or "the Act"), which describes the Act's applicability, defines certain terms used in the Act, and authorizes appropriations for carrying out the Act. Section 401 of the bill would revise section 400 of the Act in its entirety to take account of the Department of Education Organization Act (DEOA), 20 U.S.C. 3401 et seq., and generally to clarify the applicability of GEPA.

Section 400(b)(1) of the Act, as revised, would provide that, notwithstanding section 427 of the DEOA, and except as otherwise provided, the Act would apply to each applicable program of the Department of Education. Section 400(c)(1), as revised, would expand the definition of "applicable program" to include any program for which the Secretary or the Department of Education has administrative responsibility as provided by law or delegation of authority pursuant to law. The Act would apply to programs, such as those under the Rehabilitation Act of 1973, that were not previously subject to the Act but that were transferred to the Department under the DEOA. This amendment would also make it clear that GEPA applies to programs administered by the Department which were authorized by statutes that took effect after the effective date of the DEOA (May 4, 1980). This change is necessary to provide consistent treatment of programs with respect to such administrative and substantive matters as recordkeeping by grantees, the period during which recipients may obligate funds under State formula grant programs, and the confidentiality of student records.

Section 400(b)(2) would provide that except as provided otherwise, the Act does not apply to contracts made by the Department. This provision is needed to clarify this matter. The Department's contracts are governed by the comprehensive government-wide provisions of Title 41 of the United States Code and by the Federal Acquisition Regulation in Title 48 of the Code of Federal Regulations. Those provisions of the Act that expressly refer to contracts, such as section 411, relating to advance funding, and section 426(c), relating to the development of curricula or instructional materials, would continue to apply to contracts.

Section 400(c)(2) would retain the definition of "applicable statute" currently set out in section 400(c)(1)(B) of the Act, but it would not retain the exclusion in current section 400(c)(3) of the Act that the term "applicable statute" does not include any appropriations Act. As currently defined, the term "applicable

statute" is used only in section 414 of the Act, relating to the contingent extension of programs, and section 422 of the bill would drop the term from that section as unwarranted. (A different definition is provided in section 441 of the Act, relating to advisory committees, to govern the use of the term in that section.)

Section 400(c)(3) and (4) would define "Department" and "Secretary", respectively, to mean the Department and Secretary of Education, in conformance with the DEOA.

Section 400(d), as amended, would provide that nothing in the Act shall be construed to affect the applicability of nondiscrimination statutes to any applicable program. Current section 400(c) (2) of the Act refers only to Title VI of the Civil Rights of 1964. The broader language included in the bill would make it clear that the Act also does not affect the applicability of other nondiscrimination statutes. The applicability of those statutes is governed by their respective terms.

Section 400(e) would retain the authority set out in current law in section 400(d) to appropriate such sums as may be necessary to carry out the Act in any fiscal year.

Section 402. Section 402 of the bill would repeal section 400A of the Act. Section 400A includes a variety of provisions designed to eliminate unnecessary paperwork and to improve the collection of information relating to Federal education programs. Among other things, section 400A establishes the Federal Education Data Acquisition Council (FEDAC) to advise and assist the Secretary with respect to the improvement, development, and coordination of Federal education information and data acquisition activities. Section 400A is no longer needed because the same purposes are achieved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and because the FEDAC was abolished in May, 1987, pursuant to notice under section 448(b) of the Act.

PART B--THE DEPARTMENT OF EDUCATION

Section 410. Section 410 of the bill would amend the heading of Part A of the Act to conform with the DEOA by referring to the Department of Education.

Section 411. Section 411 of the bill would amend section 408 of the Act by striking out subsections (c) and (d), and everything but the rulemaking authority in subsection (a), since those provisions have been superseded by various provisions of the DEOA. Section 411 would also make technical changes in subsection (b) to reflect the DEOA, but the substance of that subsection would be retained to ensure the integrity of the competitive grants process.

Section 412. Section 412 of the bill would, in effect, repeal all of section 403 of the Act except for current section 403(d)(1), which establishes an Office of Nonpublic Education. That language would be moved to amended section 409 for a more logical placement. The other provisions of section 403 have been superseded by section 102 of the DEOA.

The current text of section 409, which requires the publication of an education impact statement to determine whether the information required to be transmitted under any proposed regulation affecting institutions of higher education is already being gathered or is otherwise available, would be repealed because the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), provides sufficient safeguards against the imposition of burdensome requirements.

Section 413. Section 413 of the bill would repeal sections 401, 402, 403, 406B (as redesignated by section 401(a) of P.L. 99-159), 406C (as added by section 401(2) of Public Law 99-159), and 407 of the Act. Sections 401 and 402 relate to the organizational structure of the former Education Division in the Department of Health, Education, and Welfare and are obsolete in light of the DEOA.

Section 406B authorized fiscal year 1981 appropriations for the Pre-College Science Teacher Training Program and the Minority Institutions Science Improvement Program (MISIP). Section 406C authorized FY 1985 and 1986 appropriations for MISIP. The teacher training program was consolidated into the Chapter 2 block grant program by the Education Consolidation and Improvement Act of 1981 (ECIA) (20 U.S.C. 3801, note). The MISIP program is now authorized by part B of Title X of the Higher Education Act of 1965, as amended by Public Law 99-498, the Higher Education Amendments of 1986, and Public Law 102-325, the Higher Education Amendments of 1992.

Section 407, entitled "Rules for Education Officers", is also largely obsolete because of the DEOA. The Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4), achieves the same purposes as the remainder of section 407 (regarding conflicts of interest), rendering it unnecessary, as well.

PART C--APPROPRIATIONS AND EVALUATIONS

Section 420. Section 420 of the bill would amend section 411 of the Act to subject all applicable programs, including vocational rehabilitation programs, to section 411, which authorizes advance funding of applicable programs. Under this authority, the Congress may appropriate funds for an applicable program for the fiscal year preceding the fiscal year in which they are actually obligated, in order to permit adequate planning by State, local, and Federal officials.

Section 421. Section 421 of the bill would amend section 412 of the Act, which permits appropriations under applicable programs to be made available to educational agencies or institutions on an academic or school-year basis, and which allows those agencies and institutions to obligate those funds until the end of the fiscal year after the year for which they were appropriated.

Section 421(a) would amend the heading of section 412 of the Act to reflect the fact that section 412(b) authorizes the additional period for recipients to obligate funds.

Section 421(b)(1) would amend section 412(a) of the Act, which authorizes funds to be made available on an academic or school-year basis, to apply to all recipients, including vocational rehabilitation agencies, rather than to only "educational agencies or institutions".

Section 421(b)(2) and (3) would revise section 412(b) of the Act to make it clear that the authority to obligate funds for an additional fiscal year applies only to State formula grant programs, defined as programs whose authorizing statutes or implementing regulations provide a formula for allocating program funds among States. This is consistent with the Department's interpretation of section 412 since its enactment in 1970. The period during which funds may be obligated by a recipient of an award under a "discretionary" program is set forth in the award document, in accordance with applicable Comptroller General decisions.

Section 422. Section 422 of the bill would clarify the one-year contingent extension of programs authorized under section 414 of the Act and would repeal the provision authorizing a two-year contingent extension. The substance of the one-year contingent extension provision in section 414 of the Act would be unchanged; merely clarifying and structural amendments are proposed. The two-year contingent extension as currently drafted is ambiguous, unnecessary, and has never been used. A one-year "grace period" after a program's statutorily mandated expiration of authority should provide sufficient leeway in the reauthorization process to avoid any unintended lapses in program authority and to avoid any adverse consequences to program participants. In addition, by

dropping a reference to the term "applicable statute" in the provision of section 414 governing the carrying out of certain acts or the making of certain determinations during the terminal year of a program, the bill would make clear that acts or determinations required by appropriations acts, as well as by other statutes, are to be carried out or made during the period of extension. The Act currently excludes appropriations statutes from the definition of "applicable statute", an exclusion that makes no sense in the context of section 414.

Section 423. Section 423 of the bill would clarify and streamline section 417(a) of the Act, which authorizes the Secretary to submit an Annual Evaluation Report (AER) to Congress. The proposed amendments relating to the AER are designed to require a more realistic deadline for submission of the AER, to clarify existing requirements, and to eliminate certain reporting requirements for which experience has demonstrated, that little, if any, useful data exist, such as the current section 417(a)(C) requirement of identifying which sectors of the public bear the cost of a particular program, and the current section 417(a)(F) requirement to indicate the effectiveness of a program by tabulations of available data on the sex, race, and age of its beneficiaries.

Experience with the AER has also shown that certain types of information required under the current section 417 are not appropriate because of the inherent nature and timing of the AER. The current section 417(a) requirement to include information relating to "compliance with provisions of law requiring the maintenance of non-Federal expenditures for the purposes of such applicable programs" mixes compliance information (the availability of which is limited to a very few programs and the accuracy and comprehensiveness of which cannot be assessed in the course of preparing the AER) with evaluative information, which results in a confusing and inappropriate combination of markedly different types of information. Additionally, the bill would delete all requirements relating to recommendations (e.g., for legislation or corrective action), because the transmittal of the AER occurs around the annual submission of the President's budget and accompanying legislation. Recommendations in the AER, because they relate to the past year, are thus very confusing when compared to the prospective recommendations contained in the budget submission. In the interest of clarity, recommendations would best be confined to the budget and legislative processes and deleted from the AER.

Section 424. Section 424(a) of the bill would make a technical amendment to section 415 of the Act to reflect the DEOA. Section 424(b) would make conforming amendments to sections 416 and 419(c) of the Act, respectively, to reflect the redesignation of 400(d) of the Act made by section 401 of the bill.

I'm not sure that the AER is transmitted at any particular time.

the time of the

Section 425. Section 425 of the bill would repeal section 413 of the Act, relating to the availability of appropriations. Section ~~413~~ *merge* 413 duplicates language routinely included in appropriations acts and has caused uncertainty over whether there may be a rescission of funds appropriated under applicable programs. Repeal of section 413 would make it clear that statutes generally governing appropriations and rescissions would apply to applicable programs.

PART D--ADMINISTRATION OF EDUCATION PROGRAMS

Section 430 Section 430 of the bill would amend section 421A of the Act, relating to the delegation of functions, the use of the services and facilities of public or nonprofit agencies or institutions, and the consolidation of programs. Section 430(b) (1) would repeal section 421A(a) and (b) of the Act, relating to the delegation of functions and the use of outside agencies, respectively, since those provisions have been superseded by sections 412, 415, and 419 of the DEOA.

Section 430(b) (2) of the bill would add a new subsection (a) to section 421A of the Act. The new section 421A would provide express authority for the Secretary to enter into arrangements with other Federal agencies jointly to carry out particular projects of common interest, and to transfer program funds to other Federal agencies, and to receive funds from those agencies, for this purpose. Section 421A(a) would further provide that any funds so transferred or received by the Secretary may be used only for activities authorized by, and made available only to parties eligible under, the statutes authorizing the appropriation of, and appropriating, those funds. New section 421A(a) is needed because provisions on which the Secretary has relied in the past are not as clear as is desirable, or, as in the case of the Joint Funding Simplification Act, have expired.

for joint funding
Section. 430(b) (3) of the bill would redesignate section 421A(c) of the Act (~~the so-called "Cranston Amendment"~~) as section 421A(b). Section 430(b) (4) of the bill would amend this provision by deleting a paragraph that prohibits the Secretary from making the receipt of a grant or contract using funds from one appropriation dependent upon the receipt of a grant or contract supported by funds from another appropriation. In its place, the bill would add a new provision that would authorize the Secretary to require applicants under two or more programs under which awards are made on a competitive basis to submit applications jointly for each program, and to review and approve those joint applications separately from other applications, when he determines that joint awards are needed to address a special need consistent with the purposes and authorized activities of each affected program. This provision is necessary to provide the Secretary sufficient flexibility to address special problems that encompass the purposes and authorized activities of two or more discretionary programs. Another new provision would similarly allow the Secretary to require applicants to submit applications under discretionary programs that achieve the same purposes but that are administered by other Federal agencies.

Why can't extension to this?

Section 431. Section 431 of the bill would amend section 425 of the Act by making technical changes in subsection (a) [and by striking out subsections (b) and (d)]. [Those two subsections currently permit an applicant for, or recipient of, Federal funds

But ACIA was repealed in 1988. Why do we
want good consistency with it?

to appeal a State educational agency's (SEA) review of a final action to the Secretary, and authorize the Secretary to terminate the SEA's program funds for noncompliance with section 425. Retaining the ultimate administrative reviewing authority at the Federal, rather than State, level is contrary to the intent of Chapters 1 and 2 of the Education Consolidation and Improvement Act of 1981 and other State-administered programs subject to section 425, and, by inappropriately depriving States of control of educational decision-making, is inconsistent with fundamental principles of Federalism.]

Section 432. Section 432 of the bill would amend section 426 of the Act by making several technical amendments to conform with the DEOA, and by striking out subsection (a). That subsection authorizes the Secretary to provide various forms of technical assistance and duplicates the Secretary's authority under section 422(a) of the DEOA.

Section 433. Section 433 of the bill would expand the Secretary's authority under section 428 of the Act to withhold Federal funds from a State because of an LEA's failure to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) to include failure to comply with title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). This amendment would not affect the variety of enforcement mechanisms, including withholding, already available to the Secretary under those statutes. Section 433 of the bill would also broaden the types of programs the withheld funds may be used for, so that grants to the local educational agencies (LEAs) of the State from which funds were withheld could be used for any of the Department's programs that redress discrimination on the basis of race, national origin, sex, age, or handicap. This expansion provides a greater flexibility to channel funds into the types of equity programs most needed by the various LEAs and recognizes the need for a broad spectrum of tools to employ in enforcing the four major civil rights statutes administered by the Department. Section 428 would also be amended to provide that the Secretary could reallocate withheld funds to other LEAs in the same State, or to all States, in accordance with the program's governing statute.

Section 434. Section 434 of the bill would revise section 431 of the Act, relating to regulations, in its entirety. Section 431(a) would define "regulation" as used in section 431, to mean any generally applicable rule, regulation, guideline, interpretation, or other requirement prescribed by the Secretary or the Department of Education, and that has legally binding effect in connection with, or affecting, the provision of financial assistance under any applicable program. This definition would make it clear that section 431 of the Act applies only to requirements of general applicability that are intended to be

legally binding on applicants for, and recipients of, financial assistance from the Department. Section 431 would continue to be inapplicable to non-binding guidance, to procurement matters, and to other matters, such as Departmental housekeeping provisions, not connected to the provision of financial assistance. Consistent with section 414 of the DEOA, Section 431 of the Act would also be inapplicable to regulations pertaining to nondiscrimination statutes enforced by the Department's Office for Civil Rights. In addition, by repealing current section 431(f), which subjects regulations under Title IX of the Education Amendments of 1972, but not under other nondiscrimination statutes, to the delayed effective date provisions under current section 431, the bill would achieve consistent treatment of civil rights regulations.

Section 431(b) of the Act would retain the requirement of current section 431(a)(2) that each substantive provision of a regulation issued by the Secretary be followed by citations to the particular section or sections of statutory law or other legal authority on which the provision is based.

Section 431(c) of the Act, which requires that all regulations be uniformly applied and enforced throughout the fifty States, would be retained. Section 431(d) of the Act would require that regulations be promulgated in accordance with chapter 5 of title 5 of the U.S. Code. Section 431 would not contain its own provisions concerning public comment on regulations since adequate provisions are included in section 553 of title 5. This section would continue to require the Department to comply with the rulemaking procedures in section 553 notwithstanding the exception in section 553(a)(2) relating to public property, loans, grants, and benefits except that, to expedite the Department's grant award process, section 553 rulemaking procedures would not apply to regulations that govern only a particular grant competition, where the Secretary determines that the application of this exception is necessary to ensure the timely award of grants of otherwise meet the objectives of the relevant applicable program. or?

Section 431(e) would require that following the enactment of a statute affecting the administration of any applicable program, the Secretary submit to specified congressional committees a schedule for the promulgation of any final regulations that the Secretary determines are necessary to implement the statute. The Secretary may revise the schedule for good cause and submit a new schedule to the committees. Section 431(e) would remove some of the inflexibility imposed by current section 431(g), including the requirements to submit the regulations schedule on the 60th day after a statute's enactment and to promulgate all final regulations within 180 days of the submittal of such schedule and would provide the Secretary with clear authority to determine that regulations are not needed to implement a new statute if, for example, there is no reasonable likelihood that funds will be appropriated for a discrete program under the statute. The absence of such authority

has forced the Department needlessly to expend scarce resources to issue regulations for programs that have never actually been implemented.

Section 431(f) would retain the requirement in current law that the Secretary transmit copies of final regulations to the Congress concurrently with their publication in the Federal Register. Section 431 would not include any provisions describing the effective date of final regulations, since adequate provisions are included in section 551(d) of title 5, which imposes a delay of 30 days but which allows a waiver for good cause. Section 431 would also not retain any of the provisions of current section 431 concerning congressional review and disapproval of regulations, since those provisions are unconstitutional in light of Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983) and subsequent cases.

Section 435. Section 435 of the bill would add a new section 436A to the Act to give the Secretary authority to vest title to equipment purchased with Federal program funds in SEAs, LEAs, nonprofit institutions of higher education, and nonprofit organizations whose primary purpose is research, and to waive accountability to the United States for such equipment. This new section, which is based on a previous section 436 (repealed in 1978) is needed to relieve recipients of accountability in certain situations. The absence of this waiver authority has led to problems arising from audits and is burdensome on grantees for example, in a situation where a grantee had needed to purchase a particular type of office equipment, such as a typewriter, and used it over a multi-year grant period. The Secretary might determine that the used office equipment had insufficient value to be of use to the Department, or that the Department simply did not need that piece of used office equipment. Yet if the grantee were to keep this used office equipment under current law, its current market value, multiplied by the Department's share of the grant, could be disallowed in an audit. Under this amendment, the Secretary would have the discretion to waive the grantee's accountability to the United States for the cost of that equipment. ✓

Section 436. Section 436 of the bill would amend section 437(a) of the Act, relating to program records maintained by recipients, by removing a provision requiring recipients to retain those records for five years after the completion of the activity for which the Federal program funds were used. This provision of the bill would thus subject recipients to the same record retention period used throughout the Government (currently three years) and would relieve recipients of the burden of retaining records for a longer period except when otherwise required to do so. Programs that are not currently considered "applicable programs" under the Act are now subject to this three-year record retention provision, as set out at 34 CFR 74.21 and 74.22. As set out in these regulatory provisions, the record retention period begins (with ?

some exceptions) with the filing of the grantee's final expenditure report, and if any litigation, claim, negotiation, audit or other action is begun within that three-year period, the records would have to be retained until the completion of that action and resolution of all issues arising from it. Thus, the Department's ability to monitor its programs effectively for waste, fraud, and abuse would not be jeopardized by this amendment--requiring the commencement of an action within three years of the filing of a final expenditure report is not unreasonable--and grantees would be relieved of the burden of needlessly retaining records for an additional two years.

Section 436 would also amend section 437(b) of the Act so that it does not apply to contracts, and to ensure that the Secretary shall continue to have access to relevant records maintained by a recipient that are no longer subject to a records retention requirement. Provisions governing contracts are set out in Title 41 of the U.S. Code and Title 48 of the Code of Federal Regulations. While this section of the bill would revise the records retention requirements for applicable programs, this amendment to section 437(b) of the Act is intended to make clear that the modification of that requirement is not intended to deny the Secretary access to records that the recipient chooses to maintain beyond the mandatory period.

Section 437. Section 437 of the bill would make a number of technical and conforming amendments to the heading for Part C of the Act and to sections 422, 427, 429, 430, 434-436, and 438 of the Act that are necessary for conformity with the DEOA and with the repeal of most of the provisions of section 403 of the Act as proposed in section 412 of this bill.

Section 438. Section 438 of the bill would repeal sections 421, 423, 424, and 426A of the Act. Section 421, relating to the applicability of Part C of the Act, is duplicative of section 400 of the Act, confusing, and unnecessary. Repealing section 421 would make Part C applicable to the same extent as is the Act generally. Section 423, which authorizes the Catalog of Federal Education Assistance Programs, duplicates the education portion of the Catalog of Federal Domestic Assistance published by the Office of Management and Budget. Section 424, which authorizes the publication of an annual compilation of innovative projects assisted by the Department, is obsolete because all of the programs referred to in the section have been consolidated into ~~block grant~~ programs. [Section 426A authorized equalization assistance and expired at the end of fiscal year 1984.]

Chapter 2 of Title 2 of ESEA.

PART E--ADVISORY COMMITTEES

*Amphibians are
not needed after
advances*

Section 440. Section 440 of the bill would amend the definitions for Part D of the Act, set out in section 441, to conform with the terminology used in the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), by changing all references to an "advisory council" to "advisory committee". "Presidential advisory council" would be amended to read "Presidentially appointed advisory committee" to avoid confusion with "Presidential advisory committee" as defined under FACA, which performs a different function. "Secretarial advisory council" would also be amended for consistency, and the definition of "Commissioner's advisory council" would be eliminated as unnecessary, in view of the DEOA. None of these proposed amendments would make any substantive changes to Part D of the Act; the proposed changes in terminology would simply provide consistency and eliminate confusion in the application of Part D of the Act and FACA. Additionally, the definition of "nonstatutory advisory committee" in section 441(3) of the Act would be revised by deleting subparagraph (B), which relates to field readers for grants and contracts. In practice, these readers do not function as a body obtaining group consensus like an advisory committee. A panel of field readers should not, therefore, be considered an advisory committee, and be required to go through the burdensome charter procedures required of advisory committees, when in fact they perform very different functions.

Section 441. Section 441 of the bill would eliminate sections 442(b) and (c) of the Act, and make certain technical changes to conform with the DEOA and the definitional changes proposed in section 440 of the bill. Section 442(b), which provides that advisory councils authorized by that section will terminate within one year of creation (with exceptions), conflicts with FACA, which places no substantive time constraint on the life of a nonstatutory advisory committee. A one-year maximum life span for advisory committees is an artificial impediment that can lead to the serial establishment of advisory committees that closely resemble the previous committee. The length of time for which an advisory committee is authorized should have some relation to the work to be performed by that particular committee, rather than an arbitrary and universal maximum.

Section 441 of the bill would also strike out section 442(c) of the Act, which refers to the Commissioner's annual report authorized under section 448 of the Act. Section 447 of the bill would move the substance of section 442(c) of the Act to section 448 of the Act for a more logical placement of that provision.

Section 442. Section 442(a) of the bill would make a technical change in the heading for section 443 of the Act necessitated by the changes proposed in section 440 of the bill.

Section 442(b)(1) of the bill would make similar technical changes to section 443 of the Act and would change the deadline for advisory committee annual reports to December 31 for the preceding fiscal year, to conform with both FACA and the Federal Government's use of the fiscal, rather than calendar, year. Section 443(a) (2) of the Act would also be amended to reflect the practice of submitting committee reports directly to Congress ~~as well as~~ ^{along} with the annual report required under section 426 of the DEOA rather than the Commissioner's annual report required under section 448 of the Act, as well as to reflect the fact that information currently required as part of the Commissioner's annual report (e.g., names and affiliations of advisory committee members) is actually contained in the reports submitted in conjunction with the report required under section 426 of the DEOA.

Section 442(b)(2) would extend to members of all statutory advisory committees the authority to continue to serve until other members are appointed. Currently, this authority is confined to Presidential advisory council members. This amendment would provide greater administrative efficiency and smoother transitions for committee members.

Section 442(b)(3) would simply move the prohibition against the Secretary serving as a member of any advisory committee into a separate subsection to improve the Act's structural clarity.

Section 443. Section 443 of the bill would amend section 444 of the Act to eliminate travel time from the time for which advisory committee members may receive compensation. Committee members would continue to receive compensation for their travel expenses.

Section 444. Section 444 of the bill would amend section 445 of the Act to bring the compensation rates of executive directors of all statutory advisory committees, including ~~Presidentially~~ appointed advisory committees, into conformity with the rates of pay for comparable positions in the competitive service. Advisory committee executive directors should be paid at a rate commensurate with their duties and in accordance with the classification of their job descriptions.

Section 445. Section 445 of the bill would amend section 446 of the Act to require nonstatutory advisory committees to meet a minimum of two times each fiscal year. This would conform to current law requirements for statutory advisory committees and thus simplify the overall administration of advisory committee activities by the Department.

Section 446. Section 446 of the bill would amend section 447 of the Act to conform with the DEOA and changes proposed in section 440 of the bill.

Section 447. Section 447 of the bill would amend section 448 of the Act to make necessary technical changes and delete the June 30 deadline for submission of the annual report required by section 448.. This annual report is submitted as part of the Secretary's annual report, for which there is no specified deadline.

Section 447 of the bill would also amend section 448(b) of the Act, which authorizes the Secretary to abolish advisory committees that no longer serve their purposes, by deleting the legislative veto provision in order to be consistent with the Supreme Court decision in Immigration and Naturalization Service v. Chadha 462 U.S. 919 (1983). Under this amendment, the Secretary would notify congressional committees of his recommendation for advisory committee changes. This procedure would be consistent with the reorganization procedures authorized under section 413 of the DEOA.

Section 448. Section 448 of the bill would amend section 449 of the Act to make certain technical changes, and to conform with the normal statutory interpretation that a future Congress is not bound by the actions of a past Congress in fashioning a statute. Currently, section 449(a) of the Act provides that Part D of the Act applies regardless of any conflicting provisions of law relating to advisory councils. Section 448 would strike out section 449(a) so that normal principles of statutory construction relating to the applicability of other statutes would apply.

[To be revised]

[PART F--CONFORMING AMENDMENTS AND EFFECTIVE DATE

[Section 450. Section 450 of the bill would make various conforming amendments to other laws as follows:

[Section 450(a) of the bill would repeal sections 4, 9, and 100(d) of the Rehabilitation Act of 1973, as amended, which duplicate provisions of the Act that would be made applicable to programs under the Rehabilitation Act by the amendments to section 400 of the Act proposed in Section 101 of the bill. Section 4 of the Rehabilitation Act, relating to advance funding, duplicates section 411 of the Act. Section 9 of the Rehabilitation Act, relating to audits and recordkeeping, is duplicated by Section 437 of the Act. Section 100(d) of the Rehabilitation Act, which provides for the contingent extension of the Title I Basic State Grant program, duplicates section 414 of the Act.

[Section 450(b) of the bill would amend section 7036 of the Bilingual Education Act, as amended by the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-297), to correct a cross reference to section 405 of GEPA.]

Section 450(c) of the bill would amend a cross-reference in section 5342(d) of the Indian Education Act of 1988, as enacted by P.L. 100-297, to conform with changes proposed in this bill.

Section 450(d) of the bill would amend the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) to 'repeal the termination, in section 491(b), of the Secretary's authority to abolish advisory councils, which would conform to changes to section 448(b) of GEPA proposed in section 447 of the bill.

Finally, section 450(e) of the bill would amend a cross-reference in section 111 of the Education for Economic Security Act (20 U.S.C. 3921) to conform with the repeal of section 432 of GEPA, as proposed in section 413 of the bill.

Section 451. [To be supplied]

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UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

October 17, 1994

Honorable Alice M. Rivlin
Director
Office of Management and Budget
Washington, DC 20503

Dear Dr. Rivlin:

I am writing in response to your request for my views on enrolled bill H.R. 6, the "Improving America's Schools Act of 1994." The principal purpose of H.R. 6 is to extend Federal programs of assistance for elementary and secondary education through the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) for the next five years. Because this legislation embodies many of the Administration's proposals and holds great promise of improving the quality of education programs for our most needy children, and because its enactment is needed in order for the Department to award approximately \$10 billion in ESEA funds for the new fiscal year, I strongly recommend that the President sign H.R. 6.

H.R. 6 is substantially modeled on the Administration's reauthorization proposal for the ESEA. Combined with the President's other education initiatives that Congress passed earlier this year--the Goals 2000: Educate America Act and the School-to-Work Opportunities Act of 1994--H.R. 6 provides a new framework for Federal support for education in our country and represents a major accomplishment for the Administration.

Our ESEA reauthorization proposal embodied five fundamental principles: (1) all children can achieve to high academic standards; (2) professional development for teachers and other educators must be an integral part of every educator's job; (3) Federal resources must be targeted to communities and schools where the needs are greatest and in amounts sufficient to make a difference; (4) schools and school districts must have the flexibility to implement reform geared to their individual needs; and (5) reaching high standards will require a strong partnership with parents and others in the community. We have also sought, throughout the reauthorization process, to build on the Goals 2000: Educate America Act by emphasizing that Act's focus on improving teaching and learning for all children, improved coordination and integration of programs, and increased flexibility in return for accountability.

The version of the Improving America's Schools Act of 1994 now before the President clearly reflects these principles, although not always to the extent I had hoped. In particular, I am disappointed that the bill does not go as far as it should in targeting funds on the neediest communities and schools under Title I of the ESEA, which provides aid to school districts based on their numbers and concentrations of poor children. The bill also contains too many new, prescriptive, and, at times, overlapping categorical programs. Nevertheless, H.R. 6 is, on the whole, a very significant improvement over current law. Its major features are discussed below.

Title I of the Bill - Reauthorization of the ESEA

Title I of H.R. 6 reauthorizes and completely restates the ESEA, organized into the following 14 titles:

ESEA, Title I - Helping Disadvantaged Children Meet High Standards. I am delighted that, in reauthorizing the largest Federal program of aid for elementary and secondary education, H.R. 6 focuses on helping disadvantaged children reach the same standards that are set for other children, rather than continuing the current practice of supporting separate, remedial programs that focus on low-level skills; promotes decision-making at the individual school level; makes it easier to operate schoolwide programs while ensuring that those programs are of high quality; establishes strong performance accountability measures; emphasizes professional development for school staff; and promotes increased parental involvement in developing and implementing Title I programs. These elements, which we proposed, should enable local programs to significantly improve educational outcomes for our neediest children.

I am less pleased with provisions of the bill governing the distribution of funds among and within States and local communities. The impact of the new Title I formula on our goal of targeting resources on the neediest communities and schools is highly uncertain--it may make a small step in the direction of improved targeting, or it may decrease targeting--depending on future appropriations actions. The bill preserves the current formulas for allocating funds equal to the fiscal year 1995 appropriation, so any change in targeting will depend on how "new" funds are appropriated beginning with fiscal year 1996. If those additional funds are directed through the new formula for Targeted Grants under section 1125, poor urban and rural school districts will receive above-average increases. However, if funds are directed through the new Education Finance Incentive Program in section 1125A, the Nation's poorest districts will receive below-average funding increases. While the new Targeted Grants would affect only a small portion of total Title I funds, I hope we can persuade the Congress to devote any funding

increases to those grants rather than to the poorly targeted Incentive program.

The bill adopts many of our recommendations for improving the Even Start program and the Title I program for the education of migratory children. Unfortunately, the bill fails to follow the same course with respect to the State program for neglected and delinquent children, instead expanding it to include children at risk of dropping out and, in the process, making the whole program ill-defined and difficult to administer at both the Federal and State levels. I am happy to note that the bill includes our proposal to eliminate the separate Title I program for children with disabilities and, instead, effectively merges it into the much larger authority of the Individuals with Disabilities Education Act. In addition to greater ease of administration at all levels of government, this merger will remove the undesirable financial incentive that some States now have to serve children with disabilities in State institutions, rather than in local schools. Finally, I support the bill's adoption of our proposal to authorize Title I demonstrations, which will permit us to test, evaluate, and disseminate innovative approaches to educating disadvantaged children.

ESEA, Title II - Dwight D. Eisenhower Professional Development Program. Title II of the ESEA adopts, virtually intact, our proposal to create a new Federal program that encourages professional development in all of the core academic subjects. In order for the other aspects of education reform to be truly effective, professional development must be ongoing, long-term, and designed to prepare teachers to teach to State standards. This new program will help that happen. I am disappointed that the bill also retains, as Title VI, a revamped version of the current Chapter 2 program (which we had proposed be replaced by the new Eisenhower program) and that the appropriations bill for Fiscal Year 1995, by diverting nearly \$350 million to Chapter 2, provides less than half the funds the President requested for professional development.

ESEA, Title III - Technology for Education. Part A of Title III gives the Secretary of Education a comprehensive leadership role in bringing technology to elementary and secondary classrooms across the Nation. In this role, the Secretary would develop a national long-range plan, carry out national leadership activities, provide assistance to States and local consortia to plan for effective use of technology, evaluate and disseminate information on educational technology issues, and provide challenge grants to communities to spur innovative uses of educational technology. I wholeheartedly support these provisions, which are similar to those in our proposal and will help ensure that all students have access to telecommunications and information technology. It is vital that educational institutions be part of the National Information Infrastructure

and that connections and basic access services for information resources be free, or as inexpensive as possible, to educators and students.

Part B of Title III is similar to the Administration's Star Schools proposal, including authorizing the use of funds for leadership, evaluation, and peer review activities. There are, however, two differences: first, the Star Schools authority in H.R. 6 has a more extensive list of priorities than the Administration proposed; and, second, it includes three new telecommunications programs. The additional priorities represent worthy goals, but could complicate award competitions. The new programs are discretionary with the Secretary, and would merely compete with other permitted activities.

The remainder of Title III authorizes various categorical grant programs, which overlap or duplicate activities authorized elsewhere in the bill and which I oppose.

ESEA, Title IV - Safe and Drug-Free Schools and Communities.

I am pleased that Title IV of the ESEA closely follows the Administration's proposal. Of greatest significance, the programmatic focus of the new Title IV has been broadened to include activities designed to prevent school-related violence, as well as illegal drug and alcohol use among our Nation's students, making this title a particularly apt response to the challenge posed by the seventh National Education Goal. In addition, the State grant program reflects a new emphasis on comprehensive and coordinated planning and heightened accountability at the State and local levels, and provides for greater targeting of resources in those school districts with the most severe drug, alcohol, and violence problems among youth. Finally, I am pleased by the significantly expanded range of discretionary Federal activities authorized, as well as the elimination of the drug-free school certification requirements (which had outlived their usefulness) for school districts and States.

ESEA, Title V - Promoting Equity. Like the Administration's ESEA proposal, H.R. 6 contains a Title V that promotes equity. Parts A (Magnet Schools) and B (Women's Educational Equity) are similar to the Administration's proposals, including the use of Part B funds for local implementation activities. Part C, however, would essentially reauthorize Part A of Title VI of the current ESEA, a program requiring grants to certain categories of school districts and educational partnerships for activities related to dropouts, including information collection, coordination, and educational, occupational, and basic skills testing services. Part C also provides funding for educational partnership projects previously funded under the School Dropout Demonstration Assistance Act of 1988 for two additional fiscal

years. I believe that dropout prevention can be more effectively addressed through the reauthorized Title I.

ESEA, Title VI - Innovative Education Program Strategies. As noted above, I regret that the Congress has chosen to extend this authority, currently authorized under Chapter 2 of Title I. This program of support for State and local educational improvement is no longer warranted, in light of the new program that supports State and local educational reform under Title III of the Goals 2000: Educate America Act and the new professional development program in Title II of the ESEA. In the next budget, we will again propose that this program be eliminated, in accordance with the recommendations of the National Performance Review.

ESEA, Title VII - Bilingual Education, Language Enhancement, and Language Acquisition Programs. Overall, Title VII of the ESEA presents positive results. I am very pleased that the Congress has adopted the major legislative changes the Administration sought in the Bilingual Education Act, Part A of Title VII. In particular, Part A would: (1) provide schools and school districts with greater flexibility to develop instructional programs appropriate to their particular needs and circumstances; (2) expand the role of State educational agencies, fostering new and more effective partnerships for successful education reform from which linguistically and culturally diverse children will benefit; and (3) more clearly provide opportunities for integration of bilingual education with related Federal programs.

Part B would change the current Foreign Language Assistance Program, with its ineffective formula, to a potentially effective competitive program and also establish a new program of formula-based incentive payments to elementary schools that provide students with a program leading to communicative competency in a foreign language. Although I question the likely effectiveness of the incentive program, I support the objective of developing the foreign language proficiency of our students.

Part C would reauthorize the current Immigrant Education Program. Although I am disappointed that the Congress did not adopt our proposals in this area, I support, as a part of our shared responsibility with the States for integrating immigrant children and youth into our society, assisting school districts that experience a large increase in their student population due to immigration.

ESEA, Title VIII - Impact Aid. Title VIII consolidates and significantly modifies two current statutes, Public Laws 81-874 and 81-815, which authorize assistance to school districts that are adversely affected by activities of the Federal Government in their areas. Although the bill's formula for distributing funds

to school districts with significant numbers of federally connected children does not target funds as sharply as I would have preferred, the result is clearly superior to current law and probably as much as could be achieved given the strong interest of certain key Members of Congress.

I am especially pleased that the bill severely curtails the eligibility of districts serving so-called "civilian b" children. This reform will result in over 700 districts no longer receiving funds for students who do not constitute a financial burden to them. Additionally, Congress essentially adopted the Administration's proposal to eliminate the current school construction program contained in Public Law 81-815 in favor of a formula program aimed at heavily impacted school districts. Finally, our proposed methodology for certifying State school finance programs as "equalized" was adopted and even strengthened. In terms of targeting and ease of administration, the Impact Aid provisions of H.R. 6 are far better than current law.

ESEA, Title IX - Indian, Native Hawaiian, and Alaska Native Education. I support Part A of Title IX, which reauthorizes, and places within the ESEA, a variety of programs that serve Indian children and adults. As proposed by the Administration, school districts that receive formula grants under this title will more fully integrate Indian children into their overall local education reform plans, by helping them meet the same high standards that are expected of all children and through comprehensive planning and coordination with other services and activities. I oppose Parts B and C of Title IX, which continue separate programs for Native Hawaiians and create new programs for Alaska Natives. The former are on the National Performance Review list of programs that should be terminated, and the latter are not needed.

ESEA, Title X - Programs of National Significance. I am pleased that Title X includes our request for a new program to fund the planning and start-up of public charter schools--schools that are given much greater freedom than normal over their mission and the means to attain higher standards. Title X also authorizes a large number of relatively small programs, some of them meritorious, some of them not. I support extension of the Fund for the Improvement of Education, the Javits Gifted and Talented program, the Arts in Education program, and the Inexpensive Book Distribution program, as proposed by the Administration. The other programs in this title should not have been included, but are unlikely to be funded at significant levels.

ESEA, Title XI - Coordinated Services. Title XI of the ESEA would authorize school districts, schools, and consortia of schools to use ESEA funds to develop and implement coordinated

services projects, in order to provide students and their families better access to the social, health, and education services that students need to succeed in school and their families need to ensure students' success. Funds under this title could be used for such activities as hiring a services coordinator, improving coordination and communication among the agencies participating in the project, and purchasing basic operating equipment, but could not be used for the direct provision of health-related services.

While I strongly support the goal of coordinated services projects, I have two serious concerns about Title XI, as passed. First, to carry out such projects, each school district, school, or consortium must submit an application to the Secretary for approval--a requirement that is likely to impose excessive administrative burdens on the Department. Second, if approval is granted, applicants would be authorized to use up to five percent of the total funds each receives under the ESEA for the coordinated services project, without apparent regard to the programmatic source of the funds--thereby allowing applicants to turn small ESEA grants into coordinated services projects at will.

ESEA, Title XII - School Facilities Infrastructure Improvement Act. While I do not support the creation of this new authority, which authorizes a program of grant assistance for construction and renovation of school facilities, libraries, and media centers, I am pleased that the Congress accepted many of our suggestions to make this program more manageable than it would have been as initially introduced.

ESEA, Title XIII - Support and Assistance Programs to Improve Education. I am pleased that Part A of Title III generally reflects our proposal to provide comprehensive technical assistance to improve education throughout the Nation. This part authorizes the Secretary to establish a network of 15 comprehensive regional assistance centers to provide training and technical assistance for programs under the ESEA. Each center would maintain staff expertise in areas vital to education reform, provide assistance using the highest-quality and most cost-effective strategies, and work in coordination with other relevant organizations. This authority differs in some details from our proposal, which would have established a network of 10 centers and provided more flexibility during the transition from the current fragmented system. Nevertheless, the change in approach is very significant, and teachers and other educators will be far better served under it than by the current system of dozens of centers that focus only on individual programs in isolation from each other.

Part B of Title XIII reauthorizes the National Diffusion Network (NDN) to carry out a State-based outreach, consultation,

training, and dissemination program. The NDN's State Facilitators would, among other activities, provide professional development and technical assistance services, including the use of regional and national electronic networks. I oppose Part B because the reauthorization of the NDN is unnecessary in light of the more comprehensive activities under the Educational Research, Development, Dissemination, and Improvement Act of 1994 enacted earlier this year as part of the Goals 2000 legislation.

Part C of Title XIII authorizes the Secretary to establish regional mathematics and science education consortia. These consortia would disseminate exemplary mathematics and science education instructional materials and provide technical assistance regarding teaching methods and assessment tools for use by elementary and secondary school students, teachers, and administrators. While I support the consortia's efforts to strengthen the quality of instruction in mathematics and science, I would have preferred that the consortia activities be included in a more comprehensive professional development program, such as the one under the Title II, ESEA program.

Part D of Title XIII authorizes the Secretary to provide a broadly accessible technology-based technical assistance service to support ESEA programs. I welcome the opportunity to explore options for providing this type of technical assistance service.

ESEA, Title XIV - General Provisions. I am pleased that Title XIV of the ESEA contains many critical provisions that the Administration proposed to support flexibility and comprehensive approaches to reform. For example, Title XIV authorizes optional consolidation of State and local administrative funds, optional consolidation of State and local plans and applications, and Secretarial waiver of statutory and regulatory requirements under the ESEA (although this useful authority is saddled with more restrictions than it should be). This title also contains, as proposed by the Administration, common provisions relating to maintenance of fiscal effort and the participation of students attending private schools in ESEA programs, as well as broad authority to use program funds to carry out needed program evaluations.

Other useful provisions, not originally proposed by the Administration, include the requirements relating to the integration of State plans under the ESEA, not only among themselves, but with State improvement plans under the Goals 2000: Educate America Act, the School-to-Work Opportunities Act of 1994, and the Carl D. Perkins Vocational and Applied Technology Education Act, as well as the provision of a "grace year," during which States that have State laws that are in conflict with the requirements of the Gun-Free Schools Act of 1994 (mandatory one-year expulsion for students who bring a weapon to school) may come into compliance. Finally, I am very

pleased that the school prayer provision does not require the Department to determine the parameters of constitutionally protected school prayer in the public schools, but leaves that issue in the courts, where it belongs, and that the provisions relating to the sexuality of students contain no invidious distinctions.

Title II of the Bill - Amendments to the General Education Provisions Act

In general, I am pleased with the amendments made to the General Education Provisions Act by Title II of the enrolled bill; they represent--as proposed by the Administration--a long-needed comprehensive overhaul of many of the administrative authorities applicable to the Department of Education. Particularly welcome are the new provisions designed to ensure equitable participation in the Department's programs; new, flexible authority for the joint funding of programs, both within the Department and with other Federal agencies; and streamlined regulatory authority that permits the Secretary, when appropriate, to operate the first year of new programs without program regulations, and replaces the general requirement that the Department issue regulations within 240 days of enactment, with a more reasonable 360-day requirement.

I oppose, as inappropriate, the new "policing" functions assigned the Department regarding the programs, operations, and solicitations of organizations that provide, for a fee, honors programs, seminars, or student exchange programs that are directed to secondary students and are offered away from their homes. However, these latter provisions do not outweigh the other benefits of Title II.

Title III of the Bill - Amendments to Other Acts

Part A - Amendments to the Individuals with Disabilities Education Act. As noted in the discussion of Title I of the ESEA, H.R. 6 adopts our proposal to merge the Title I program for children with disabilities into the Individuals with Disabilities Education Act. This merger, which has been pursued for several years by both the Executive Branch and some Members of Congress, and recommended by the General Accounting Office, will end the inequitable system under which a small number of States receive disproportionately large grants under the Title I program and will eliminate the administrative costs at the State and Federal levels of preparing and processing a separate application and operating a separate program.

Part B - Education for Homeless Children and Youth. Part B of Title III of the bill reauthorizes the State literacy training

program for homeless adults and the education for homeless children and youth program under Title VII of the Stewart B. McKinney Homeless Assistance Act. With few exceptions, the bill adopts our proposal to continue the literacy program for homeless adults and to improve the quality of, and access to, education for homeless children and youth. I would have preferred that the bill contain our provision requiring State plans to demonstrate that transportation, to the extent possible, will be provided at no cost to homeless children and youth attending the school in which they are enrolled. Free transportation plays a key role in serving these children. Nevertheless, I am pleased that the bill requires comparable services for public preschool education for homeless children and ensures that homeless children and youth have an opportunity to meet the same challenging State standards to which all students in the State are held.

Part E - Higher Education. Part E of Title III contains a wide assortment of provisions affecting postsecondary education that range from the purely technical to the substantive. While Part E contains some provisions that I do not support, I believe the good provisions outweigh the bad. Among its more significant provisions, Part E corrects an erroneous cross-reference to a provision of the Higher Education Act of 1965 (HEA) in the Carl D. Perkins Vocational and Applied Technology Education Act, the effect of which was to expand inadvertently the field of eligible participants under the Perkins Act. Part E also authorizes a program of grants to State correctional agencies to assist incarcerated youths (not above 25 years old) pursue a postsecondary degree or certificate program, and to provide these youths with related support services. While I support the provision of these prisoner education and related services as important steps in reducing recidivism, this section creates yet another categorical program, and is only a partial substitute for the provision of Pell Grants to incarcerated individuals, which was barred by a provision in the recently enacted crime bill.

Title IV of the Bill - National Education Statistics

I am very pleased that Title IV of H.R. 6, the "National Education Statistics Act of 1994," is quite similar to the Administration's own proposal for reauthorizing the National Center for Education Statistics and the National Assessment of Educational Progress. It is also gratifying that authorization of the National Assessment Governing Board remains in this title. I am disappointed, however, that the National Assessment and the Governing Board have been authorized for only three years, rather than five, as that will adversely affect our ability to contract for conduct of the Assessment in a timely and efficient way.

Summary

Congressional passage of the Improving America's Schools Act of 1994 is a major accomplishment in our efforts to reform American education. It will provide the funds and the programmatic structure that will enable the Federal Government to support States and communities throughout the Nation as they strive to meet the National Education Goals, by insisting on high standards for all children, by promoting comprehensive school reform, and by reducing burdens and increasing flexibility and accountability for performance.

I am very gratified that, on numerous key points, the bill now before the President so closely resembles the legislation that we proposed a little over a year ago. Although the Congress has made a number of changes that I do not support, the essential principles and vision of our proposal remain intact. Moreover, H.R. 6 is the product of substantial bipartisan efforts over nearly two years, and it is highly unlikely that we could expect a better version of this legislation from either this Congress or the 104th Congress next year. Accordingly, it is my very strong recommendation that the President sign H.R. 6.

Yours sincerely,


Richard W. Riley

FEB 23 1993

U.S. DEPARTMENT OF EDUCATION

Statement by the Secretary of Education

on the

FY 1993 Economic Stimulus Supplemental Appropriation Request

Mr. Chairman and Members of the Committee:

I am pleased to be here today, and to have this first opportunity to meet with the Members of the Committee. Let me also say that I appreciate your willingness to move so quickly on President Clinton's request for the economic stimulus supplemental appropriation. The President's stimulus package is important for two reasons. First, it will spur economic growth in the short run and create new jobs for many Americans who are out of work. And second, it is a down payment on the President's longer-run investment package to rebuild America and improve the productivity of our people.

The stimulus package includes \$2.759 billion for the Department of Education--\$735 million for two Chapter 1 items and \$2 billion for the Pell Grant shortfall.

Chapter 1 Summer Program

For the Chapter 1 compensatory education program, which provides supplementary education services to 6 million disadvantaged elementary and secondary school students, we are requesting \$500 million for immediate grants to local school districts in inner cities and other areas with high concentrations of poor students. The funds will be used to launch new education programs this summer that will employ up to 83,000 teachers, classroom aides, and other staff.

If Congress passes the President's proposal without modification, we will notify States by late March of their county allocations, thus allowing 9 to 10 weeks for school districts to hire staff and plan their summer programs. We also will require school districts to obligate all of the funds by September 30, 1993, and to provide assurances that at least 80 percent of those funds will have been spent by that time. This will ensure that the supplemental has the desired economic stimulus effect.

In addition, we are coordinating with the Department of Health and Human Services and the Department of Labor to ensure that our summer activities complement each other and that there are no wasteful duplications of services. For instance, the Department of Labor might encourage its summer work programs to support student tutors for younger children as a part of our Chapter 1 program.

Easing the Chapter 1 Transition to 1990 Census Data

In addition to the Chapter 1 summer program, we are requesting \$235 million to mitigate the impact on districts that will lose funds in fiscal year 1993 as result of using 1990 Census data for the first time to make Chapter 1 allocations. The 1990 Census showed that while the total number of poor children increased between 1980 and 1990, the distribution of those children shifted so that there are relatively more in the western States and fewer in the east.

Fiscal year 1993 is the first year that Chapter 1 allocations will be based on this new distribution, and the supplemental appropriation will ease the transition. Without the supplemental, some districts would receive substantially reduced Chapter 1 grants, and as many as 6,000 school personnel could lose their jobs.

Funds will be distributed to States based on the amount needed to bring counties up to approximately 92 percent of their fiscal year 1992 level of combined basic and concentration grant allocations. States will then be required to distribute funds only to school districts that received less than 92 percent of their 1992 level.

Before I move on to the Pell shortfall, let me take a moment to address the implications of the recently completed National Assessment of Chapter 1, which the Department transmitted to Congress this week. The assessment showed, in general, that Chapter 1 has not done as well as we hoped in closing the gap in achievement between students in high-poverty schools and students in low-poverty schools. The report also suggested some ways to improve the effectiveness of Chapter 1, and we will be working closely with the Congress on this during the upcoming reauthorization.

In the meantime, we believe that our Chapter 1 summer program proposal will provide exactly the kind of extended learning opportunity that appears to be missing from much of the regular Chapter 1 program. The assessment noted, for example, that 70 percent of regular classroom teachers report that Chapter 1 participants are pulled out of regular instruction for services, and that Chapter 1 provides on average only about 10 minutes of extra instructional time a day. Chapter 1 summer programs, on the other hand, can greatly extend instructional time and provide intensive services without disrupting the regular classroom. Only 15 percent of Chapter 1 districts are currently able to offer summer programs, and our supplemental will enable many more districts to provide the services that disadvantaged children need.

In addition, the Department is prepared to help create effective summer programs by disseminating information on model programs and offering technical assistance, and by helping districts to coordinate Chapter 1 services with Head Start and Department of Labor programs.

These two supplemental appropriations for the Chapter 1 program will support jobs for tens of thousands of school personnel while providing enhanced educational opportunity to students in school systems throughout the country.

The Pell Shortfall

One of the most pressing education problems facing American families is how to pay for their children's college education in the face of rising college costs. The Department's student aid programs help families pay college costs by providing grants, loans, and work-study opportunities to over 7 million students.

We are fully committed to these programs. In fact, they are a key component of the President's commitment to major investments in human capital that will yield payoffs for the Nation far beyond their original price.

Thus, you can imagine my concern over the estimated \$2 billion multi-year shortfall in the Pell Grant program. The immediate problem created by the shortfall was how to ensure that no student's grant would be reduced in the school year starting next fall. Over the longer term, the shortfall represented a large, inherited deficit that threatened my determination to follow a "pay-as-you-go" approach that would allow us to make needed investments in education while living within our budget.

I am most pleased, therefore, that we have been able to include \$2 billion in this supplemental to pay off the current estimate of the entire shortfall--\$1.4 billion for the prior year shortfalls and \$653 million for the estimated shortfall for the upcoming 1993-94 school year. This will allow us to issue a Pell payment schedule immediately, so that students who are now making plans for next fall will be able to find out how much grant aid will be available.

Before I briefly describe measures the Department is taking to prevent future shortfalls of this magnitude, let me say that in our dealings with the Congress on this and all other issues, we will follow the lead of President Clinton, who spoke last week about the importance of "honest budgeting." When problems develop, I promise you will hear about them as soon as possible so that we can work together toward a solution.

We will be taking a variety of steps to improve our technical ability to predict the costs of the Pell Grant program.

As you know, problems in estimating Pell costs arise primarily because of the difficulty inherent in the Department's current practice of using two-year-old applicant and recipient data to predict student behavior two years into the future.

We are now trying to improve on this approach by using the most current partial-year data for the 1992-93 school year to modify our estimates. The risk in this procedure is that trends in partial-year data may not hold up for the full year. On balance, however, we believe this approach will produce more up-to-date, accurate cost estimates.

We also have established a technical group, including experts from outside the Department, to review Pell Grant projections on a monthly basis in light of all available application and enrollment data. This process should provide an "early warning" of any changes that might affect our cost estimates. In addition, we are considering ways to obtain and utilize more up-to-date information from postsecondary institutions regarding the numbers of students enrolling and applying for Pell Grants. These measures will make our estimates better reflect the latest information on student enrollment and application trends.

We also will continue to study whether we can make model improvements to take into account a broader range of macro-economic factors, such as regional unemployment rates. This combination of the latest information on what students are doing today, together with a careful consideration of factors that might influence their behavior in the future, should lead to more accurate estimates of Pell Grant costs.

Conclusion

In summary, our request for the Department of Education is a critical component of the President's total strategy to jumpstart our economy; and will help to lay the foundation for future investment efforts of the Administration and the Congress to improve American education. I urge you to give the President's request your full support.

I will be happy to answer any questions you may have.