

104TH CONGRESS  
2D SESSION

# S. 2166

To increase the overall economy and efficiency of Government operations and enable more efficient use of Federal funding by enabling State, local and tribal governments and private, nonprofit organizations to use amounts available under certain Federal assistance programs in accordance with approved flexibility plans.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1996

Mr. HATFIELD introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To increase the overall economy and efficiency of Government operations and enable more efficient use of Federal funding by enabling State, local and tribal governments and private, nonprofit organizations to use amounts available under certain Federal assistance programs in accordance with approved flexibility plans.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Local Empowerment  
5       and Flexibility Pilot Act of 1996”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) historically, Federal programs have ad-  
4 dressed the Nation's problems by providing categor-  
5 ical financial assistance with detailed requirements  
6 relating to the use of funds;

7 (2) while the assistance described in paragraph  
8 (1) has been directed at critical problems, some pro-  
9 gram requirements may inadvertently impede the ef-  
10 fective delivery of services;

11 (3) the Nation's State, local, and tribal govern-  
12 ments and private, nonprofit organizations are deal-  
13 ing with increasingly complex problems which re-  
14 quire the delivery of many kinds of services;

15 (4) our Nation's communities are diverse and  
16 many have innovative planning and community in-  
17 volvement strategies to comprehensively meet their  
18 particular service needs for providing services, but  
19 Federal, State, and local grant and other require-  
20 ments often hamper effective implementation of such  
21 strategies; and

22 (5) it is more important than ever to provide  
23 programs that—

24 (A) promote more effective and efficient  
25 delivery of services at all levels of government

1 to meet the full range of needs of individuals,  
2 families, and society;

3 (B) respond flexibly to the diverse needs of  
4 the Nation's communities;

5 (C) reduce the barriers between programs  
6 that impede the State, local, and tribal govern-  
7 ments' ability to effectively deliver services; and

8 (D) empower State, local, and tribal gov-  
9 ernments and private, nonprofit organizations  
10 to be innovative in creating programs that meet  
11 the unique needs of their communities while  
12 continuing to address national policy goals.

13 **SEC. 3. PURPOSES.**

14 The purposes of this Act are to—

15 (1) improve the delivery of services to the pub-  
16 lic;

17 (2) promote State, local and tribal governments  
18 and private, non-profit organizations and consor-  
19 tiums to identify goals to improve their communities  
20 and the lives of their citizens;

21 (3) enable eligible applicants to adapt programs  
22 of Federal financial assistance to the particular  
23 needs of their communities by integrating programs  
24 and program funds across existing Federal financial

1 assistance programs that have similar goals and pur-  
2 poses;

3 (4) more effectively meet the goals and pur-  
4 poses of Federal, State and local financial assistance  
5 programs;

6 (5) empower eligible applicants to work to-  
7 gether to build stronger cooperative, intergovern-  
8 mental and private partnerships to address critical  
9 service problems;

10 (6) place less emphasis in Federal financial as-  
11 sistance programs on complying with procedures and  
12 more emphasis on achieving Federal, State, local  
13 and tribal policy goals;

14 (7) facilitate State, local, and tribal government  
15 efforts to develop regional or metropolitan solutions  
16 to shared problems; and

17 (8) improve intergovernmental efficiency.

18 **SEC. 4. DEFINITIONS.**

19 For purposes of this Act:

20 (1) **AFFECTED FEDERAL AGENCY.**—The term  
21 “affected Federal agency” means the Federal agency  
22 with principal authority for the administration of an  
23 eligible Federal financial assistance program in-  
24 cluded in a plan.

1           (2) AFFECTED STATE AGENCY.—The term “af-  
2           fected State agency” means—

3                   (A) any State agency with authority for  
4                   the administration of any State program or eli-  
5                   gible Federal financial assistance program; and

6                   (B) with respect to education programs,  
7                   the term shall include the State Education  
8                   Agency as defined by the Elementary and Sec-  
9                   ondary Education Act and the Higher Edu-  
10                  cation Act.

11           (3) APPROVED FLEXIBILITY PLAN.—The term  
12           “approved flexibility plan” means a flexibility plan  
13           or that part of a flexibility plan, that is approved by  
14           the Community Empowerment Board under section  
15           8.

16           (4) BOARD.—The term “Board” means the  
17           Community Empowerment Board established under  
18           section 5.

19           (5) DIRECTOR.—The term “Director” means  
20           the Director of the Office of Management and Budg-  
21           et.

22           (6) ELIGIBLE APPLICANT.—The term “eligible  
23           applicant” means a State, local, or tribal govern-  
24           ment, qualified organization, or qualified consortium  
25           that is eligible to receive financial assistance under

1       1 or more eligible Federal financial assistance pro-  
2       gram.

3               (7) ELIGIBLE FEDERAL FINANCIAL ASSISTANCE  
4       PROGRAM.—The term “eligible Federal financial as-  
5       sistance program”—

6               (A) except as provided in subparagraph  
7               (B), means a domestic assistance program (as  
8       defined under section 6101(4) of title 31, Unit-  
9       ed States Code) under which financial assist-  
10       ance is available, directly or indirectly, to a  
11       State, local, or tribal government or a qualified  
12       organization to carry out activities consistent  
13       with national policy goals; and

14              (B) does not include—

15              (i) a Federal program under which di-  
16       rect financial assistance is provided by the  
17       Federal Government directly to an individ-  
18       ual beneficiary of that financial assistance,  
19       or to a State to provide direct financial as-  
20       sistance, or to a State to provide direct fi-  
21       nancial or food voucher assistance directly  
22       to an individual beneficiary;

23              (ii) a program carried out with direct  
24       spending (as defined in section 250(c)(8)  
25       of the Balanced Budget and Emergency

1 Deficit Control Act of 1985 (2 U.S.C.  
2 900(c)(8));

3 (iii) a program of assistance referred  
4 to in section 6101(4)(A)(ix) of title 31,  
5 United States Code, or section 3(10) of the  
6 Congressional Budget Act of 1974; or

7 (iv) any project specially designated in  
8 an appropriations Act or its accompanying  
9 report.

10 (8) FLEXIBILITY PLAN.—The term “flexibility  
11 plan” means a comprehensive plan or part of such  
12 plan for the coordination or integration and the ad-  
13 ministration by an eligible applicant of financial as-  
14 sistance provided by the Federal Government under  
15 2 or more eligible Federal financial assistance pro-  
16 grams that includes funds from Federal, State, local,  
17 or tribal government or private sources to address  
18 the service needs of a community.

19 (9) GOALS AND PURPOSES.—The term “goals  
20 and purposes” means the goals and purposes em-  
21 bodied in an eligible Federal financial assistance  
22 program, including the targeted population embodied  
23 in that program.

24 (10) LOCAL GOVERNMENT.—The term “local  
25 government” means—

1 (A) a political subdivision of a State that  
2 is a unit of general local government (as de-  
3 fined under section 6501 of title 31, United  
4 States Code);

5 (B) any combination of political subdivi-  
6 sions described in subparagraph (A) that sub-  
7 mits an application to the Board; or

8 (C) a local educational agency as defined  
9 under section 14101(18) of the Elementary and  
10 Secondary Education Act of 1965 (20 U.S.C.  
11 8801(18)).

12 (11) QUALIFIED CONSORTIUM.—The term  
13 “qualified consortium” means a group that is com-  
14 posed of 2 or more qualified organizations, State,  
15 local, or tribal agencies that receive federally appro-  
16 priated funds.

17 (12) QUALIFIED ORGANIZATION.—The term  
18 “qualified organization” means a private, nonprofit  
19 organization described in section 501(c)(3) of the  
20 Internal Revenue Code of 1986 (26 U.S.C.  
21 501(c)(3)) that is exempt from taxation under sec-  
22 tion 501(a) of the Internal Revenue Code of 1986  
23 (26 U.S.C. 501(a)).

24 (13) SMALL GOVERNMENT.—The term “small  
25 government” means any small governmental jurisdic-

1       diction defined in section 601(5) of title 5, United  
2       States Code, and a tribal government.

3           (14) STATE.—The term “State” means each of  
4       the 50 States, the District of Columbia, Puerto Rico,  
5       American Samoa, Guam, and the Virgin Islands.

6           (15) STATE LEGISLATIVE OFFICIAL.—The term  
7       “State legislative official” means—

8           (A) the presiding officer of a chamber of a  
9       State legislature; and

10          (B) the minority leader of a chamber of a  
11       State legislature.

12          (16) TRIBAL GOVERNMENT.—The term “tribal  
13       government” means the governing entity of an Indian  
14       tribe, as that term is defined in the Indian Self De-  
15       termination and Education Assistance Act (25  
16       U.S.C. 450b).

17       **SEC. 5. ESTABLISHMENT OF COMMUNITY EMPOWERMENT**  
18                               **BOARD.**

19          (a) IN GENERAL.—There is established a Community  
20       Empowerment Board, which shall consist of—

21           (1) the Secretary of Housing and Urban Devel-  
22       opment;

23           (2) the Secretary of Health and Human Serv-  
24       ices;

25           (3) the Secretary of Agriculture;

- 1 (4) the Secretary of Transportation;
- 2 (5) the Secretary of Education;
- 3 (6) the Secretary of Commerce;
- 4 (7) the Secretary of Labor;
- 5 (8) the Secretary of the Treasury;
- 6 (9) the Attorney General;
- 7 (10) the Secretary of the Interior;
- 8 (11) the Secretary of Energy;
- 9 (12) the Secretary of Veterans Affairs;
- 10 (13) the Secretary of Defense;
- 11 (14) the Director of the Federal Emergency
- 12 Management Agency;
- 13 (15) the Administrator of the Environmental
- 14 Protection Agency;
- 15 (16) the Director of the National Drug Control
- 16 Policy;
- 17 (17) the Administrator of the Small Business
- 18 Administration;
- 19 (18) the Director of the Office of Management
- 20 and Budget;
- 21 (19) the Administrator of General Services; and
- 22 (20) other officials of the executive branch as
- 23 directed by the President.
- 24 (b) CHAIR.—The President shall designate the Chair
- 25 of the Board from among its members.

1 (c) FUNCTIONS.—

2 (1) IN GENERAL.—The Board shall—

3 (A) no later than 180 days after imple-  
4 mentation of this Act, select 6 States to partici-  
5 pate in this Act;

6 (B) receive, review, and approve or dis-  
7 approve flexibility plans in accordance with sec-  
8 tion 7;

9 (C) consider all requests for technical as-  
10 sistance from eligible applicants and, when ap-  
11 propriate, provide or direct that an affected  
12 Federal agency provide the head of an agency  
13 that administers an eligible Federal financial  
14 assistance program under which substantial  
15 Federal financial assistance would be provided  
16 under the plan to provide technical assistance  
17 to the eligible applicant, and to the extent per-  
18 mitted by law, special assistance to interested  
19 small governments to support the development  
20 and implementation of a flexibility plan, which  
21 may include expedited processing;

22 (D) in consultation with the Director, mon-  
23 itor the progress of development and implemen-  
24 tation of flexibility plans;

1 (E) in consultation with the Director, co-  
2 ordinate and assist Federal agencies in identify-  
3 ing regulations of eligible Federal financial as-  
4 sistance programs for revision, repeal and co-  
5 ordination;

6 (F) evaluate performance standards and  
7 evaluation criteria for eligible Federal financial  
8 assistance programs, and make specific rec-  
9 ommendations to agencies regarding how to re-  
10 vise such standards and criteria in order to es-  
11 tablish specific performance and outcome meas-  
12 ures upon which the success of such programs  
13 and the success of the plan may be compared  
14 and evaluated; and

15 (G) designate a Federal agency to be pri-  
16 marily responsible for the oversight, monitoring,  
17 and evaluation of the implementation of a plan.

18 (2) QUALIFICATIONS FOR STATES.—Of the 6  
19 States selected for participation under paragraph 1:

20 (A) 3 States shall each have a population  
21 of 3,500,000 or more as determined under the  
22 most recent decennial census; and

23 (B) 3 States shall each have a population  
24 of 3,500,000 or less as determined under the  
25 most recent decennial census.

1 (d) COORDINATION AND ASSISTANCE.—The Director,  
2 in consultation with the Board, shall coordinate and assist  
3 Federal agencies in creating—

4 (1) a uniform application to be used to apply  
5 for assistance from eligible Federal financial assist-  
6 ance programs;

7 (2) a release form to be used by grantees to fa-  
8 cilitate, where appropriate and otherwise lawful, the  
9 sharing of information across eligible Federal finan-  
10 cial assistance programs; and

11 (3) a system wherein an organization or Consor-  
12 tium of organizations may use one proposal to apply  
13 for funding from multiple eligible Federal financial  
14 assistance programs.

15 (e) DETAILS AND ASSIGNMENTS TO BOARD.—At the  
16 request of the Board and with the approval of the appro-  
17 priate Federal agency, staff of the agency may be detailed  
18 or assigned to the Board on a nonreimbursable basis.

19 (f) INTERAGENCY FINANCING.—Notwithstanding any  
20 other law, interagency financing is authorized to carry out  
21 the purposes of this Act.

22 (g) JUDICIAL REVIEW.—The actions of the Board  
23 shall not be subject to judicial review.

1 **SEC. 6. APPLICATION FOR APPROVAL OF FLEXIBILITY**  
2 **PLAN.**

3 (a) IN GENERAL.—An eligible applicant may submit  
4 to the Board in accordance with this section an application  
5 for approval of a flexibility plan.

6 (b) CONTENTS OF APPLICATION.—An application  
7 submitted under this section shall include—

8 (1) a proposed flexibility plan that complies  
9 with subsection (c);

10 (2) written certification by the chief executive  
11 of the applicant, and such additional assurances as  
12 may be required by the Board, that—

13 (A) the applicant has the ability, authority,  
14 and resources to implement the proposed plan,  
15 throughout the geographic area in which the  
16 proposed plan is intended to apply;

17 (B) amounts are available from non-Fed-  
18 eral sources to pay the non-Federal share of all  
19 eligible Federal financial assistance programs  
20 included in the proposed plan; and

21 (C) the flexibility plan prohibits the inte-  
22 gration or combination of program funds across  
23 existing Federal financial assistance programs  
24 which do not have similar goals and purposes;

25 (3) written certification that each entity with  
26 legal authority over a Federal financial assistance

1 program included in the plan has consented to the  
2 terms of the plan;

3 (4) all comments on the proposed plan submit-  
4 ted under subsection (d) by a Governor, affected  
5 State agency, State legislative official, or a chief ex-  
6 ecutive of a local or tribal government that would be  
7 directly affected by implementation of the proposed  
8 plan, and the applicant's responses to those com-  
9 ments;

10 (5) written documentation that the eligible ap-  
11 plicant informed the affected community of the con-  
12 tents of the plan, made the plan available for public  
13 inspection for a reasonable period of time and gave  
14 the public and the affected population the oppor-  
15 tunity to comment upon the plan, including at least  
16 one public hearing involving agencies, qualified orga-  
17 nizations, eligible intended beneficiaries of the plan,  
18 and others directly affected by the plan;

19 (6) the public comments, which shall include  
20 the comments of the affected population, received on  
21 the plan and the applicant's responses to the signifi-  
22 cant comments; and

23 (7) other relevant information the Board may  
24 require to review or approve the proposed plan.

1 (c) CONTENTS OF PLAN.—A flexibility plan submit-  
2 ted by an eligible applicant under this section shall in-  
3 clude—

4 (1) the geographic area and timeframe to which  
5 the plan applies and the rationale for selecting the  
6 area and timeframe;

7 (2) the particular groups of individuals and  
8 subgroups of the targeted population, by service  
9 needs, economic circumstances, or other defining  
10 factors, who currently receive services and benefits  
11 under the eligible Federal financial assistance pro-  
12 grams included in the plan and the particular groups  
13 of individuals, by service needs, economic cir-  
14 cumstances, or other defining factors who would re-  
15 ceive services and benefits under the plan;

16 (3) the specific goals and measurable perform-  
17 ance criteria that demonstrate how the plan is ex-  
18 pected to improve the delivery and effectiveness of  
19 services to the targeted population, including—

20 (A) a description of how performance shall  
21 be measured under the plan when compared to  
22 the current performance of the eligible Federal  
23 financial assistance programs included in the  
24 plan; and

1 (B) a system for the comprehensive evalua-  
2 tion of the impact of the plan on individuals  
3 who receive services and benefits in the commu-  
4 nity affected by the plan, that shall include—

5 (i) a list of goals to improve the com-  
6 munity and the lives of its citizens in the  
7 geographic area covered by the plan;

8 (ii) a list of goals identified by the  
9 State in which the plan is to be imple-  
10 mented, if such goals have been established  
11 by the State; and

12 (iii) a description of how the plan  
13 will—

14 (I) attain the goals listed in  
15 clauses (i) and (ii);

16 (II) measure performance;

17 (III) collect and maintain data  
18 including, where appropriate, data  
19 measuring the impact of the plan on  
20 those subgroups identified in section  
21 6(c)(2); and

22 (IV) publicly disseminate data  
23 collected under III within the geo-  
24 graphic area covered by the plan;

1           (4) the eligible Federal financial assistance pro-  
2           grams included in the plan and the specific services  
3           and benefits to be provided under the plan under  
4           such programs, including—

5                   (A) criteria for determining eligibility for  
6                   services and benefits under the plan;

7                   (B) the services and benefits available  
8                   under the plan;

9                   (C) the amounts and form (such as cash,  
10                  in-kind contributions, or financial instruments)  
11                  of non-service benefits; and

12                  (D) any other descriptive information the  
13                  Board considers necessary to approve the plan;

14           (5) a description of the goals and purposes of  
15           each Federal financial assistance program included  
16           in the plan and how the goals and purposes of such  
17           programs shall more effectively be met at the State,  
18           local and tribal level;

19           (6) a general description of how the plan appro-  
20           priately addresses any effect that administration of  
21           each eligible Federal financial assistance program  
22           included in the plan would have on the administra-  
23           tion of programs not included in the plan;

24           (7) a description of how the flexibility plan will  
25           adequately achieve the purposes of this Act;

1           (8) except for the requirements described under  
2 section 7(f)(3), any Federal statutory or regulatory  
3 requirement of an eligible Federal financial assist-  
4 ance program included in the plan, the waiver of  
5 which is necessary to implement the plan, and the  
6 detailed justification for the waiver request;

7           (9) any State, local, or tribal statutory, regu-  
8 latory, or other requirement, the waiver of which is  
9 necessary to implement the plan, and an indication  
10 of commitment of the appropriate State, local, or  
11 tribal governments to grant such waivers;

12           (10) a description of the Federal fiscal control  
13 and related accountability procedures to be followed  
14 under the flexibility plan and, as necessary, an ex-  
15 planation of how such procedures will not diminish  
16 existing Federal requirements;

17           (11) a description of the sources and amounts  
18 of all non-Federal funds that are required to carry  
19 out eligible Federal financial assistance programs in-  
20 cluded in the plan;

21           (12) verification that Federal funds made avail-  
22 able under the plan will not supplant non-Federal  
23 funds for existing services and activities that pro-  
24 mote the goals of the plan;

1           (13) verification that none of the Federal funds  
2 under the plan would be used to—

3           (A) meet maintenance of effort require-  
4 ments of such an activity; or

5           (B) meet State, local, or tribal matching  
6 shares; and

7           (14) any other relevant information the Board  
8 may require to approve the plan.

9 (d) PROCEDURE FOR APPLYING.—

10           (1) SUBMISSION TO AFFECTED STATE AND  
11 LOCAL GOVERNMENTS.—An eligible applicant shall  
12 submit an application for approval of a proposed  
13 flexibility plan to each State, local and tribal govern-  
14 ment and affected State agency that the applicant  
15 deems to be directly affected by the plan, at least 60  
16 days before submitting the application to the Board.

17           (2) REVIEW BY AFFECTED GOVERNMENT.—The  
18 Governor, affected State agency head, State legisla-  
19 tive official, and the chief executive officer of a local  
20 government that receives an application submitted  
21 under paragraph (1) may each, by no later than 60  
22 days after the date of that receipt—

23           (A) prepare comments on the proposed  
24 flexibility plan included in the application;

1 (B) describe and make commitments to  
2 waive any State or local laws for other require-  
3 ments which are necessary for successful imple-  
4 mentation of the proposed plan; and

5 (C) submit the comments and commit-  
6 ments to the eligible applicant.

7 (3) SUBMITTAL TO BOARD.—Applications for  
8 approval of a flexibility plan shall only be submitted  
9 to the Board between—

10 (A) October 1, 1997 and March 31, 1998;

11 or

12 (B) October 1, 1998 and March 31, 1999.

13 (4) ACTION BY AFFECTED GOVERNMENT.—If  
14 the Governor, affected State agency head, State leg-  
15 islative official or the chief executive officer of a  
16 local government—

17 (A) fails to act on or otherwise endorse a  
18 plan application within 60 days after receiving  
19 an application under paragraph (1);

20 (B) does not make and submit to the eligi-  
21 ble applicant the commitments described in  
22 paragraphs (2) (A) and (B); or

23 (C) disagrees with all or part of the pro-  
24 posed flexibility plan; the eligible applicant may  
25 submit the application to the Board if the appli-

1 cation is amended as necessary for the success-  
2 ful implementation of the proposed plan without  
3 the commitment made under paragraph (2)(B),  
4 including by adding an updated description of  
5 the ability of the proposed flexibility plan to  
6 meet plan goals and satisfy performance cri-  
7 teria in the absence of statutory and regulatory  
8 waivers and financial and technical support  
9 from the State or local government.

10 (e) TRIBAL SOVEREIGNTY.—Nothing under this Act  
11 shall be construed to affect, or otherwise alter, the sov-  
12 ereign relationship between tribal governments and the  
13 Federal Government.

14 (f) ELIGIBILITY FOR OTHER ASSISTANCE.—Dis-  
15 approval by the Board of a flexibility plan submitted by  
16 an eligible applicant under this Act shall not affect the  
17 eligibility of the applicant for assistance under any Fed-  
18 eral program.

19 (g) STATE, LOCAL, OR TRIBAL AUTHORITY.—Noth-  
20 ing in this Act shall be construed to grant the Board, Fed-  
21 eral agency, or any eligible applicant authority to waive  
22 or otherwise preempt—

23 (1) any State, local, or tribal law or regulation  
24 including the legal authority under State law of any  
25 affected State agency, State entity, or public official

1 over programs that are under the jurisdiction of the  
2 agency, entity or official; or

3 (2) the existing authority of a State, State af-  
4 fected agency, local, or tribal government or quali-  
5 fied organization or qualified consortium with re-  
6 spect to an eligible Federal financial assistance pro-  
7 gram included in the plan unless such entity has  
8 consented to the terms of the plan.

9 **SEC. 7. REVIEW AND APPROVAL OF FLEXIBILITY PLANS**  
10 **AND WAIVER REQUESTS.**

11 (a) REVIEW OF APPLICATIONS.—Upon receipt of an  
12 application for approval of a proposed flexibility plan, the  
13 Board shall notify the eligible applicant as to whether or  
14 not the plan is complete. If the Board determines a plan  
15 is complete, the Board shall—

16 (1) establish procedures for consultation with  
17 the applicant and other interested parties during the  
18 review process;

19 (2) publish notice of the application for ap-  
20 proval in the Federal Register and make available  
21 the contents to any interested party upon written re-  
22 quest;

23 (3) if appropriate, coordinate public hearings on  
24 the plan by either the Board or the appropriate Fed-  
25 eral agency;

1           (4) approve or disapprove plans submitted  
2 under—

3           (i) section 6(d)(3)(A) no later than July  
4 31, 1998; or

5           (ii) section 6(d)(3)(B) no later than July  
6 31, 1999;

7           (5) in the case of any disapproval of a plan, in-  
8 clude written justification of the reasons for dis-  
9 approval in the notice of disapproval sent to the ap-  
10 plicant;

11           (6) publicly announce and forward to Congress  
12 on July 31, 1998 and July 31, 1999, the list of ap-  
13 proved flexibility plans, including an identification of  
14 approved plans that request statutory or regulatory  
15 waivers and the identification of such requested  
16 waivers.

17           (b) APPROVAL.—

18           (1) IN GENERAL.—The Board may approve a  
19 flexibility plan for which an application is submitted  
20 by an eligible applicant under this Act, if the Board  
21 determines that—

22           (A) the contents of the application for ap-  
23 proval of the plan comply with the requirements  
24 of this Act; and

1           (B) the contents of the flexibility plan indi-  
2           cate that the plan will effectively achieve the  
3           purposes of this Act described in section 3 by  
4           adhering to the conditions described in sections  
5           6 and 7.

6           (2) RESTRICTION.—(A) The Board may ap-  
7           prove no more than 30 plans; and

8           (B) only three approved plans may be submit-  
9           ted by state applicants.

10          (3) REQUIREMENT TO DISAPPROVE PLAN.—The  
11          Board must disapprove a flexibility plan if the Board  
12          determines that—

13               (A) implementation of the plan would re-  
14               sult in any increase in the total amount of obli-  
15               gations or outlays of discretionary appropria-  
16               tions or direct spending under Federal financial  
17               assistance programs, over the amounts of such  
18               obligations and outlays that would occur under  
19               those programs without implementation of the  
20               plan; or

21               (B) the flexibility plan fails to comply with  
22               paragraph (1).

23          (4) SPECIFICATION OF PERIOD OF EFFECTIVE-  
24          NESS.—In approving any flexibility plan, the Board  
25          shall specify the period during which the plan is ef-

1       fective, which in no case shall be greater than 5  
2       years from the date of approval.

3       (c) MEMORANDA OF UNDERSTANDING REQUIRED.—

4             (1) IN GENERAL.—An approved flexibility plan  
5       may not take effect until the Board receives a signed  
6       memorandum of understanding agreed to by the eli-  
7       gible applicant that would receive Federal financial  
8       assistance administered under the flexibility plan  
9       and by each affected Federal agency.

10            (2) CONTENTS.—A memorandum of under-  
11       standing under this subsection shall specify all un-  
12       derstandings that have been reached by the affected  
13       Federal agencies and the eligible applicant. The  
14       memorandum shall include understandings with re-  
15       spect to—

16             (A) the conditions described in sections 6  
17       and 7;

18             (B) the effective dates of all State, local or  
19       tribal government waivers;

20             (C) technical or special assistance being  
21       provided to the eligible applicant;

22             (D) the effective date and timeframe of the  
23       plan and each Federal waiver approved in the  
24       plan; and

1           (E)(i) the total amount of Federal funds  
2           that will be provided as services and benefits  
3           under or used to administer eligible Federal fi-  
4           nancial assistance programs included in the  
5           plan; or

6           (ii) a mechanism for determining that  
7           amount, including specification of the total  
8           amount of Federal funds that will be provided  
9           or used under each eligible Federal financial as-  
10          sistance program included in the plan.

11          (3) CONDITION FOR APPROVAL OF WAIVER RE-  
12          QUEST.—Prior to entrance into the memorandum  
13          with an eligible applicant, the affected federal agen-  
14          cies may approve a waiver if it is consistent with the  
15          goals and purposes of the eligible federal financial  
16          assistance program included in the plan.

17          (d) LIMITATION ON CONFIDENTIALITY REQUIRE-  
18          MENTS.—The Board may not, as a condition of approval  
19          of a flexibility plan or with respect to the implementation  
20          of an approved flexibility plan, establish any confidencial-  
21          ity requirement that would—

22                (1) impede the exchange of information needed  
23                for the design or provision of services and benefits  
24                under the plans; or

25                (2) conflict with law.

1 (e) LIMITATION ON THE USE OF FUNDS.—The  
2 Board may not approve any plan that includes funds  
3 under an eligible federal financial assistance program to—

4 (1) support tuition vouchers for children to at-  
5 tend private preschool, elementary or secondary  
6 schools, including before and after school programs;  
7 or

8 (2) otherwise pay their cost to attend such  
9 schools.

10 (f) WAIVERS OF FEDERAL REQUIREMENTS.—

11 (1) IN GENERAL.—Notwithstanding any other  
12 law and subject to the provisions of this Act, includ-  
13 ing paragraphs (2) and (3), affected Federal agen-  
14 cies may waive, for a period of time not to exceed  
15 5 years from the date the Board receives a signed  
16 memorandum of understanding, any statutory or  
17 regulatory requirement of an eligible Federal assist-  
18 ance program include in an approved flexibility plan  
19 of an eligible applicant if that waiver is—

20 (A) necessary for implementation of the  
21 flexibility plan;

22 (B) not disapproved by the Board; and

23 (C) necessary to effectively achieve the  
24 purposes of this Act described in section 3 by

1           adhering to the conditions described in sections  
2           6 and 7.

3           (2) EFFECTIVE PERIOD OF WAIVER.—A waiver  
4           granted under this section shall terminate on the  
5           earlier of—

6                   (A) the expiration of a period specified by  
7                   the affected Federal agency not to exceed five  
8                   years from the date the Board receives the  
9                   signed memorandum of understanding; or

10                   (B) any date on which the flexibility plan  
11                   for which the waiver is granted ceases to be ef-  
12                   fective;

13           (3) RESTRICTION ON WAIVER AUTHORITY.—An  
14           affected Federal agency may not grant a wavier for  
15           a statutory or regulatory requirement of an eligible  
16           Federal financial assistance program requested  
17           under this section that—

18                   (A) may be waived under another provision  
19                   of law except in accordance with the require-  
20                   ments and limitations imposed by that other  
21                   provision of law;

22                   (B) enforces statutory or constitutional  
23                   rights of individuals including the right to equal  
24                   access and opportunity in housing and edu-  
25                   cation, including any requirement under the in-

1           dividuals with Disabilities Education Act (20  
2           U.S.C. 1400 et seq);

3           (C) enforces any civil rights that prohibit  
4           discrimination on the basis of race, color, reli-  
5           gion, sex, national origin, age, handicap, or dis-  
6           ability;

7           (D) protects public health and safety, the  
8           environment, labor standards, worker rights,  
9           health and pension benefits or worker health  
10          and safety;

11          (E) provides for a maintenance of effort,  
12          matching share or prohibition on supplanting;

13          (F) grants any person a cause of action; or

14          (G) permits, requires or limits the partici-  
15          pation of private schools, private school chil-  
16          dren, teachers or personnel or religious organi-  
17          zations.

18   **SEC. 8. IMPLEMENTATION, AMENDING AND TERMINATION**

19                   **OF APPROVED FLEXIBILITY PLANS.**

20          (a) IMPLEMENTATION.—

21           (1) The Board, in consultation with the Direc-  
22          tor, shall issue guidance to implement this Act with-  
23          in 180 days after the date of enactment of this Act.

24           (2) Notwithstanding any other law, any service  
25          or benefit that is provided under an eligible Federal

1 financial assistance program included in an approved  
2 flexibility plan shall be paid and administered in the  
3 manner specified in the approved flexibility plan.

4 (3) The authority provided under this Act to  
5 waive provisions of grant agreements may be exer-  
6 cised only as long as the funds provided for the  
7 grant program in question are available for obliga-  
8 tion by the Federal Government.

9 (b) AMENDING OF FLEXIBILITY PLAN.—

10 (1) In the event that an eligible applicant—

11 (A) desires and amendment to an approved  
12 flexibility plan in order to better meet the pur-  
13 poses of this Act; or

14 (B) requires an amendment to ensure con-  
15 tinued implementation of an approved flexibility  
16 plan, the applicant shall—

17 (i) submit the proposed amendment to  
18 the Board for review and approval; and

19 (ii) upon approval, enter into a revised  
20 memorandum of understanding with the  
21 affected Federal agency.

22 (2) Approval by the Board and, when appro-  
23 priate, affected Federal agency, shall be based upon  
24 the same conditions required for approval of a flexi-  
25 bility plan.

1 (c) TERMINATION OF PLAN.—

2 (1) TERMINATION OF PLAN BY BOARD.—

3 (A) IN GENERAL.—The Board shall termi-  
4 nate an approved flexibility plan, if, after con-  
5 sultation with the affected Federal agencies, the  
6 Board determines that—

7 (i) the applicant of the approved flexi-  
8 bility plan is unable to meet the commit-  
9 ments under this Act; or

10 (ii) audit or oversight activities deter-  
11 mine there has been fraud or abuse involv-  
12 ing Federal funds under the plan.

13 (B) TRANSITION PERIOD.—In terminating  
14 an approved flexibility plan under this para-  
15 graph, the Board shall allow a reasonable pe-  
16 riod of time for appropriate Federal agencies  
17 and eligible applicants to resume administration  
18 of Federal programs that are eligible Federal fi-  
19 nancial assistance programs included in the  
20 plan.

21 (2) REVOCATION OF WAIVER.—

22 (A) The Board may recommend that an af-  
23 fected Federal agency, and an affected Federal  
24 agency may, revoke a waiver under section 7(f)

1 if the applicant of the approved flexibility plan  
2 fails to—

3 (i) comply with the requirements of  
4 the plan;

5 (ii) make acceptable progress towards  
6 achieving the goals and performance cri-  
7 teria set forth in the plan; or

8 (iii) use funds in accordance with the  
9 plan.

10 (B) Affected Federal agencies shall revoke  
11 all waivers issued under section 7(f) for a flexi-  
12 bility plan if the Board terminates the plan.

13 (C) EXPLANATION REQUIRED.—In the  
14 case of termination of a plan or revocation of  
15 a waiver, as appropriate, the Board or affected  
16 Federal agencies shall provide for the former el-  
17 igible applicant a written justification of the  
18 reasons for termination or revocation.

19 **SEC. 9. EVALUATIONS AND REPORTS.**

20 (a) APPROVED APPLICANTS.—

21 (1) IN GENERAL.—An applicant of an approved  
22 flexibility plan, in accordance with guidance issued  
23 by the Board, shall—

1 (A) submit any reports on and cooperate  
2 in any audits of the implementation of its ap-  
3 proved flexibility plan; and

4 (B) monitor the effect implementation of  
5 the plan has had on—

6 (i) individuals and the specific sub-  
7 groups identified in section 6(c)(2) who re-  
8 ceive services and benefits under the plan;

9 (ii) communities in which those indi-  
10 viduals live;

11 (iii) costs of administering and provid-  
12 ing assistance under eligible Federal finan-  
13 cial assistance programs included in the  
14 plan; and

15 (iv) performance of the eligible Fed-  
16 eral financial assistance programs included  
17 in the plan compared to the performance  
18 of such programs prior to implementation  
19 of the plan.

20 (2) INITIAL 1-YEAR REPORT.—No later than 90  
21 days after the end of the 1-year period beginning on  
22 the date the plan takes effect, and annually there-  
23 after, the approved applicant, respectively, shall sub-  
24 mit to the Board a report on the principal activities,  
25 achievements, and shortcomings under the plan dur-

1       ing the period covered by the report, comparing  
2       those achievements and shortcomings to the goals  
3       and performance criteria included in the plan under  
4       section 6(c)(3).

5           (3) FINAL REPORT.—No later than 120 days  
6       after the end of the effective period of an approved  
7       flexibility plan, the approved applicant shall submit  
8       to the Board a final report on implementation of the  
9       plan, including a full evaluation of the successes and  
10      shortcomings of the plan and the effects of that im-  
11      plementation on individuals who receive benefits  
12      under the eligible Federal financial assistance pro-  
13      grams under the plan.

14      (b) BOARD.—No later than two years after the date  
15      of enactment of this Act, and annually thereafter, the  
16      Board shall submit a report to the President and the Con-  
17      gress on the Federal statutory and regulatory require-  
18      ments of eligible Federal financial assistance programs  
19      that are most frequently waived under 7(f) with respect  
20      to approved flexibility plans. The President shall review  
21      the report and identify those statutory and regulatory re-  
22      quirements that the President determines should be  
23      amended or repealed.

24      (c) DIRECTOR.—Two years after this Act goes into  
25      effect, and no less than 60 days after repeal of this Act,

1 the Director shall report on its progress in achieving the  
2 functions outlined in section 5(d).

3 (d) GENERAL ACCOUNTING OFFICE.—

4 (1) Beginning on the date of enactment of this  
5 Act, the General Accounting Office shall—

6 (A) evaluate the effectiveness of eligible  
7 Federal financial assistance programs included  
8 in flexibility plans approved pursuant to this  
9 Act compared with such programs not included  
10 in a flexibility plan;

11 (B) establish and maintain, through the ef-  
12 fective date of this statute, a program for the  
13 ongoing collection of data and analysis of each  
14 eligible Federal financial assistance program in-  
15 cluded in an approved flexibility plan.

16 (2) No later than January 1, 2005, the General  
17 Accounting Office shall submit a report to Congress  
18 and the President that describes and evaluates the  
19 results of the evaluations conducted pursuant to  
20 paragraph (1) and any recommendations on how to  
21 improve flexibility in the administration of eligible  
22 Federal financial assistance programs.

23 (e) ADVISORY COMMISSION ON INTERGOVERN-  
24 MENTAL RELATIONS.—No later than January 1, 2005,  
25 the Advisory Commission on Intergovernmental Relations

1 shall submit a report to the Congress and President  
2 that—

3           (1) describes the extent to which this Act has  
4 improved the ability of State, local and tribal gov-  
5 ernments, particularly smaller units of government,  
6 to make more effective use of two or more Federal  
7 financial assistance programs included in a flexibility  
8 plan;

9           (2) evaluates if or how the flexibility provided  
10 by this Act has improved the system of Federal fi-  
11 nancial assistance to State, and tribal governments,  
12 and enabled governments and community organiza-  
13 tions to work together more effectively; and

14           (3) includes recommendations with respect to  
15 flexibility for State, local and tribal governments.

16 **SEC. 10. REPEAL.**

17 This Act is repealed on January 1, 2005.

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