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Dated: October 3, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

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DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended by the No Child Left Behind Act of 2001

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2012 under the waiver authority of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), including waivers related to flexibility granted to States in exchange for State-led reforms (ESEA flexibility).

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during 2012.

FOR FURTHER INFORMATION CONTACT: Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260-2221 or by email: Kia.Weems@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: In 2012, the Department granted waivers through an initiative known as ESEA flexibility to 35 States from ten specific provisions of the ESEA in exchange for a rigorous and comprehensive State-developed plan designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction.¹ In addition to waiving the ten provisions, the Department granted three optional waivers under ESEA flexibility. The Department also granted 134 individual waivers under the waiver authority in section 9401 of the ESEA.

We granted:

(a) ESEA flexibility: The Department granted the following ten waivers to 35 SEAs under ESEA flexibility:

1. Flexibility Regarding the 2013–2014 Timeline for Determining Adequate Yearly Progress (AYP);
2. Flexibility in Implementation of School Improvement Requirements;
3. Flexibility in Implementation of Local Educational Agency (LEA) Improvement Requirements;
4. Flexibility for Rural LEAs;
5. Flexibility for Schoolwide Programs;
6. Flexibility to Support School Improvement;
7. Flexibility for Reward Schools;
8. Flexibility Regarding Highly Qualified Teacher (HQT) Improvement Plans;
9. Flexibility to Transfer Certain Funds; and
10. Flexibility to Use School Improvement Grant (SIG) Funds to Support Priority Schools.

In addition to waiving the ten provisions listed above, the Department granted three optional waivers under ESEA flexibility related to the following:

1. Granted waivers to 23 States under the Flexibility in the Use of Twenty-First Century Community Learning Centers (21st CCLC) Program Funds;
2. Granted waivers to 33 States under the Flexibility Regarding Making AYP Determinations; and

3. Granted waivers to 33 States under the Flexibility Regarding Within-District Title I Allocations;

(b) 73 waivers extending the period during which funds were available for obligation: 11 waivers extending the period for ESEA State-administered formula grant programs that received fiscal year (FY) 2009 funds under the regular appropriation; 14 waivers extending the period for ESEA State-administered formula grant programs that received FY 2009 funds under the American Recovery and Reinvestment Act (ARRA); one waiver under the Enhancing Education Through Technology (Ed-Tech) Program; one waiver under the Migrant Education Consortium Incentive Grant Program; two waivers under the Consolidated Grant funds for Insular Areas; 38 waivers for school improvement activities for certain fiscal years' funds; and six waivers extending the period for the Striving Readers Comprehensive Literacy Formula Grant Program funds;

(c) 21 waivers relating to school improvement requirements: Three waivers pertaining to school eligibility requirements and the definition of persistently lowest-achieving schools; and 18 waivers granting additional time to meet the teacher and principal evaluation requirement (11 for cohort 1 schools and seven for cohort 2 schools);

(d) 11 waivers of requirements related to State academic standards or assessments: Three waivers allowing substitution of standards or assessments; and eight waivers permitting use of annual measurable objectives (AMOs) to make AYP determinations based on assessments administered in the previous school year;

(e) One waiver of the five percent cap on Title I funds an LEA may reserve to provide financial incentives and rewards to teachers in schools identified for improvement, corrective action, or restructuring;

(f) Two schoolwide poverty threshold waivers permitting specific schools with less than 40 percent poverty the flexibility to operate a schoolwide program;

(g) Four waivers of the requirement to provide parents notice of public school choice options at least 14 days before the start of the school year;

(h) Two new waivers and one continuation allowing LEAs both to provide SES to eligible students attending schools in the first year of improvement that received funding under Title I, Part A and to count the costs of doing so toward meeting the LEAs' "20 percent obligation";

¹ Additional information regarding ESEA flexibility can be found at: <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

(i) Six waivers allowing SEAs or LEAs to approve LEAs or schools, respectively, identified as in need of improvement to become SES providers;

(j) Eight waivers allowing SEAs to waive the carryover limitation more than once every three years for their Title I, Part A allocation received under ARRA;

(k) One waiver of the third of three annual measureable achievement objectives (AMAO 3) under Title III allowing the State to use the same targets used to determine AYP for Title I in place of the State's AMAO 3; and

(l) Four waivers related to rural programs: Two waivers allowing SEAs to provide equitable services for private school students and teachers under the Rural and Low-Income School Program (RLIS) and two waivers allowing SEAs to meet the academic achievement assessment requirement in an alternative manner under RLIS.

Waiver Data

I. ESEA Flexibility Waivers

A. Flexibility Regarding the 2013–2014 Timeline for Determining AYP

The Department waived the requirements in section 1111(b)(2)(E)–(H) of the ESEA that prescribe how an SEA establishes AMOs for determining AYP to ensure that all students met or exceeded the State's proficient level of academic achievement on the State's assessments in reading/language arts and mathematics no later than the end of the 2013–2014 school year. Under this waiver, an SEA no longer needed to follow the statutory procedures for setting AMOs to use in determining AYP. Instead, an SEA had flexibility to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.

B. Flexibility in Implementation of School Improvement Requirements

The Department waived the requirements in section 1116(b) of the ESEA for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I school that failed, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. Under this waiver, an LEA was no longer required to identify respective Title I schools for improvement, corrective action, or restructuring, and neither the LEA nor its schools were required to take statutorily required improvement actions, including providing public

school choice and supplemental educational services (SES) to eligible students. An LEA was also exempt from administrative and reporting requirements related to school improvement.

C. Flexibility in Implementation of LEA Improvement

The Department waived the requirements in section 1116(c) of the ESEA for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, failed to make AYP, and neither the LEA nor the SEA was required to take statutorily required improvement actions. An LEA was also exempt from associated administrative and reporting requirements related to LEA improvement.

D. Flexibility for Rural LEAs

The Department waived the requirements in sections 6213(b) and 6224(e) of the ESEA that limited participation in, and use of funds under, the Small, Rural School Achievement (SRSA) and RLIS programs based on whether an LEA made AYP and was complying with the requirements in section 1116 of the ESEA. Under the waiver, an LEA that received SRSA or RLIS funds had flexibility to use those funds for any authorized purpose regardless of the LEA's AYP status.

E. Flexibility for Schoolwide Programs

The Department waived the requirement in section 1114(a)(1) of the ESEA that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. Under this waiver, an LEA had flexibility to operate a schoolwide program in a Title I school that did not meet the 40 percent poverty threshold if the SEA identified the school as a priority school or a focus school, and the LEA implemented interventions consistent with the turnaround principles or interventions that were based on the needs of the students in the school and designed to enhance the entire educational program in the school, as appropriate.

F. Flexibility To Support School Improvement

The Department waived the requirement in section 1003(a) of the ESEA for an SEA to distribute funds reserved under that section only to LEAs with schools identified for improvement, corrective action, or restructuring. Under this waiver, an SEA had flexibility to allocate ESEA section 1003(a) funds to an LEA in order

to serve any priority or focus school, if the SEA determined such school was most in need of additional support.

G. Flexibility for Reward Schools

The Department waived the provision in section 1117(c)(2)(A) of the ESEA that authorized an SEA to reserve Title, Part A funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) exceeded AYP for two or more consecutive years. Under this waiver, an SEA had flexibility to use funds reserved under section 1117(c)(2)(A) of the ESEA to provide financial rewards to any reward school, if the SEA determined such school was most appropriate to receive a financial reward.

H. Flexibility Regarding HQT Improvement Plans

The Department waived the requirements in section 2141(a) through (c) of the ESEA for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers. Under the waiver, an LEA that did not meet its HQT target did not have to develop an improvement plan under section 2141 of the ESEA and had flexibility in how it used its Title I and Title II funds. An SEA was exempt from the requirements regarding its role in the implementation of those plans, including the requirement that it enter into agreements with LEAs on the use of funds and the requirement that it provide technical assistance to LEAs on their plans. This flexibility allowed an SEA and LEA to focus on developing and implementing more meaningful evaluation and support systems.

I. Flexibility To Transfer Certain Funds

The Department waived the limitations in section 6123 of the ESEA that limited the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. Under this waiver, an SEA and its LEAs had flexibility to transfer up to 100 percent of the funds received under the authorized programs among those programs and into Title I, Part A. Moreover, to minimize burden at the State and local levels, the SEA was not required to notify the Department, and its participating LEAs were not required to notify the SEA, prior to transferring funds.

J. Flexibility To Use SIG Funds To Support Priority Schools

The Department waived the requirements in section 1003(g)(4) of the ESEA and the definition of a Tier I

school in Section I.A.3 of the SIG final requirements. Under this waiver, an SEA had flexibility to award SIG funds available under section 1003(g) of the ESEA to an LEA to implement one of the four SIG models in any priority school.

The 35 applicants listed below were granted waivers under ESEA flexibility:

- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- Wisconsin Department of Public Instruction

K. Waivers Regarding Flexibility in the Use of 21st CCLC Program Funds

The Department waived requirements in sections 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA that restricted the activities provided by a community learning center under the 21st CCLC program to activities provided only during non-school hours or periods when school was not in session (*i.e.*,

before and after school or during summer recess). Under this waiver, an SEA had flexibility to permit community learning centers to use 21st CCLC funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school was not in session.

23 Waiver applicants:

- Colorado Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- Florida Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- New Jersey Department of Education
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction

L. Waivers Granting Flexibility Regarding Making AYP Determinations

The Department waived the requirements in section 1116(a)(1)(A)–(B) and (c)(1)(A) of the ESEA that required LEAs and SEAs to make determinations of AYP for schools and LEAs, respectively. Under this waiver, an SEA and its LEAs were no longer required to make AYP determinations for LEAs and schools, respectively. Instead, an SEA and its LEAs had to report on their report cards performance against the AMOs for all subgroups identified in section 1111(b)(2)(C)(v) of the ESEA, and use performance against the AMOs to support continuous improvement in Title I schools.

33 Waiver applicants:

- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- District of Columbia Office of the State Superintendent of Education

- Florida Department of Education
- Georgia Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- Wisconsin Department of Public Instruction

M. Waivers Granting Flexibility Regarding Within-District Title I Allocations

The Department waived the requirements in section 1113(a)(3)–(4) of the ESEA that required an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. Under this waiver, an LEA had flexibility to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school did not rank sufficiently high to be served based solely on the school's poverty rate.

33 Waiver applicants:

- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education

- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- Wisconsin Department of Public Instruction

II. Extensions of the Obligation Period

A. Waivers Granted for ESEA State-Administered Formula Grant Programs That Received FY 2009 Funds Under the Department's Regular Appropriation Act

Extended until September 30, 2012, the period of availability of funds under certain grant programs.

Provision waived: Section 421(b) of the General Education Provisions Act (GEPA).

11 Waiver applicants and affected programs:

- Delaware Department of Education, Title I, Part A (Grants to LEAs), Title I, Part B, Subpart 3 (Even Start), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), Title III, Part A (English Language State Grants), Title IV, Part A (Safe and Drug Free Schools and Community Grants), Title IV, Part B (21st Century Community Learning Centers), and Title VI, Part A, Subpart I, Section 6111 (State Assessment Grants)
- Georgia Department of Education, Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), and Title IV, Part A (Safe and Drug Free Schools and Community Grants)
- Guam Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- Idaho State Department of Education, Title IV, Part A (Safe and Drug Free Schools and Community Grants)
- Illinois State Board of Education, Title I, Part A (Grants to LEAs), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), Title IV, Part A (Safe and Drug Free Schools and Community Grants), and Title IV, Part B (21st Century Community Learning Centers)
- Massachusetts Department of Elementary and Secondary Education, Title I, Part A (Grants to LEAs), Title I, Part B, Subpart 3 (Even Start), Title I, Part D (Neglected and Delinquent Program), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), Title III, Part A (English Language State Grants), Title IV, Part A (Safe and Drug Free Schools and Community Grants), Title IV, Part B (21st Century Community Learning Centers), and Title VI, Part A, Subpart I, Section 6111 (State Assessment Grants)
- New York State Education Department, Title I, Part A (Grants to LEAs), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part D (Ed-Tech), Title III, Part A (English Language State Grants), and Title IV, Part A (Safe and Drug Free Schools and Community Grants)
- North Carolina Department of Public Instruction, Title II, Part D (Ed-Tech)
- Ohio Department of Education, Title I, Part B, Subpart 3 (Even Start), Title I, Part C (Migrant Education State Grants), Title I, Part D (State Agency Neglected and Delinquent Program), Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), and Title IV, Part A (Safe and Drug Free Schools and Community Grants)
- Virgin Islands Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- West Virginia Department of Education, Title I, Part A (Grants to LEAs), Title I, Part B, Subpart 3 (Even Start), Title I, Part C (Migrant Education State Grants), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part B, Sections 2201–2203 (Math Science

Partnerships), Title II, Part D (Ed-Tech), Title III, Part A (English Language State Grants), and Title IV, Part A (Safe and Drug Free Schools and Community Grants)

B. Waivers Granted for ESEA State-Administered Formula Grant Programs That Received FY 2009 Funds Under the ARRA

Extended until September 30, 2012, the period of availability of funds under certain grant programs.

Provision waived: Section 421(b) of GEPA.

14 Waiver applicants and affected programs:

- American Samoa Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- Arizona Department of Education, Title II, Part D (Ed-Tech)
- Bureau of Indian Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Delaware Department of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Georgia Department of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Guam Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- Idaho State Department of Education, Title I, Part A (Grants to LEAs)
- Illinois State Board of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Massachusetts Department of Elementary and Secondary Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- New York State Education Department, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- North Carolina Department of Public Instruction, Title II, Part D (Ed-Tech)
- Ohio Department of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Virgin Islands Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- West Virginia Department of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)

C. Waivers for the Enhancing Education Through Technology Program

Extended until September 30, 2013, the period of availability of FY 2010 (non-ARRA) funds awarded under the Title II, Part D (Ed-Tech) grant program.

Provision waived: Section 421(b) of GEPA.

One Waiver applicant:

- Idaho State Department of Education

D. Waivers for the Migrant Education Consortium Incentive Grant Program

Extended until September 30, 2012, the period of availability of FY 2009 funds awarded under the Title I, Part C (Migrant Education Consortium Incentive Grant) grant program.

Provision waived: Section 421(b) of GEPA.

One Waiver applicant:

- North Carolina Department of Public Instruction

E. Waivers of Consolidated Grant Funds for Insular Areas

Extended until September 30, 2014, the period of availability of FY 2012 funds awarded under Title I, Part A, Subpart 2, Section 1121(b) and (c) (Grants to the Outlying Areas)

Provision waived: Section 421(b) of GEPA.

Two Waiver applicants:

- Commonwealth of the Northern Mariana Islands Public School System
- Virgin Islands Department of Education

F. Waivers of the School Improvement Requirements for Certain Fiscal Years' Funds

Extended the period of availability of FY 2009 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Section 421(b) of GEPA.

One Waiver applicant:

- Delaware Department of Education
- Extended the period of availability of FY 2010 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Section 421(b) of GEPA.

24 Waiver applicants:

- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Delaware Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Minnesota Department of Education
- Nevada Department of Education
- New Jersey Department of Education
- New York State Education Department
- Ohio Department of Education
- Oklahoma State Department of Education

- Oregon Department of Education
- Puerto Rico Department of Education
- South Carolina Department of Education

Extended the period of availability of FY 2011 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Section 421(b) of GEPA.

13 Waiver applicants:

- Alabama Department of Education
- Arkansas Department of Education
- California Department of Education
- Colorado Department of Education
- Delaware Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Louisiana Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Missouri Department of Elementary and Secondary Education
- Nebraska Department of Education
- Nevada Department of Education
- Rhode Island Department of Education

G. Waivers for the Striving Readers Comprehensive Literacy Formula Grant Program

Extended the period of availability of FY 2010 funds awarded under Title I, Part E, Section 1502 of the ESEA.

Provision waived: Section 421(b) of GEPA.

Six Waiver applicants:

- Idaho State Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Missouri Department of Elementary and Secondary Education
- Nebraska Department of Education
- Wisconsin Department of Public Instruction

III. Waivers of SIG Requirements

A. Waivers of School Eligibility Requirements and Definition of Persistently Lowest-Achieving Schools

Waived the school eligibility requirements to enable a State to replace its list of Tier I, Tier II, and Tier III schools with its list of priority schools and to replace the definition of “persistently lowest-achieving schools” with the State’s definition of “priority schools.”

Provisions waived: Sections I.A.1 and I.A.3 of the SIG final requirements (75 FR 66363).

Three Waiver applicants:

- Minnesota Department of Education
- Oklahoma State Department of Education
- Tennessee Department of Education

B. Waivers Granting Additional Time To Meet Teacher and Principal Evaluation Requirements (Cohorts 1 and 2 Schools)

Allowed SEAs to permit an LEA that was implementing during the 2010–2011 school year a transformation model with SIG funds, which required development and implementation of high-quality evaluation systems, to have additional time to meet the teacher and principal evaluation requirements in schools that were not able to do so that year.

Provision waived: Section I.A.2(d)(1)(i)(B) of the SIG final requirements (75 FR 66363).

18 Waiver applicants:

a. Cohort 1 Schools:

- Alabama Department of Education
- California Department of Education
- Hawaii State Department of Education
- Illinois State Board of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- New Jersey Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Vermont Agency of Education

b. Cohort 2 Schools:

- Illinois State Board of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- New Jersey Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency

IV. Waivers of Related to State Academic Standards and Assessments

A. Waivers Regarding Standards and Assessments

Allowed the Kansas State Department of Education to permit McPherson Unified School District (MUSD), Kansas City, Kansas Public Schools (KCKPS), and the Clifton-Clyde Unified School District (Clifton-Clyde) to—

- (1) Administer the ACT in grade 12 and the EXPLORE in grade 8 in lieu of the Kansas State assessments; and
- (2) Use the results of those assessments for accountability purposes.

Provisions waived: Section 1111(b)(1)(B), (b)(3)(A), (b)(3)(C)(i), and (b)(3)(C)(ii) of the ESEA, and 34 CFR 200.1(a)(1) and 200.2(b)(1) and (b)(3)(i).

One Waiver applicant:

- Kansas State Department of Education
- Allowed Kansas to—
- (1) Administer only the Algebra I end-of-course (EOC) assessment to any middle school student who took that

course and to use those results in middle school accountability determinations rather than results from the 7th or 8th grade general mathematics assessment;

(2) Administer the Geometry EOC assessment to any 8th grade student who took Algebra I in 7th grade and Geometry in 8th grade and to use the results of that assessment in middle school accountability determinations; and

(3) Assess students who took Algebra I or Geometry in middle school with the Algebra II EOC assessment in high school and use those results for high school accountability purposes.

Provisions waived: Section 1111(b)(1)(B) and (b)(3)(C)(i) of the ESEA, and 34 CFR 200.1(a)(1).

One Waiver applicant:

- Tennessee Department of Education Allowed Tennessee to—

(1) Use, with respect to a student who was not yet enrolled in high school but who took Algebra I or English II and the corresponding EOC assessment, the student's score on that assessment for accountability purposes for the grade in which the student was enrolled; and

(2) Use EOC assessments for Algebra II and English III for high school accountability purposes for those students who take Algebra I or English II, respectively, prior to entering high school.

Provisions waived: Section 1111(b)(1)(B) and (b)(3)(C)(i) of the ESEA.

B. Waivers Permitting the Use of AMOs To Make AYP Determinations Based on Assessments Administered the Previous Year

Permitted SEAs to use the same AMOs to make AYP determinations based on assessments administered in the 2011–2012 school year that were used to make such determinations based on assessments administered in the 2010–2011 school year.

Provision waived: Section 1111(b)(2)(H) of the ESEA.

Eight Waiver applicants:

- Alabama Department of Education
- Alaska Department of Education and Early Development
- Idaho State Department of Education
- Illinois State Board of Education
- Iowa Department of Education
- Kansas State Department of Education
- Maine Department of Education
- West Virginia Department of Education

V. Waiver of the Five Percent Cap on Title I Funds an LEA May Reserve To Provide Financial Incentives and Rewards to Teachers in Schools Identified for Improvement, Corrective Action, or Restructuring

Permitted the Hillsborough County Public Schools (Florida) to reserve up to 6.6 percent of its FY 2012 Title I allocation for rewards and incentives in the 43 schools identified by the LEA.

Provision waived: Section 1113(c)(4) of the ESEA.

One Waiver applicant:

- Hillsborough County Public Schools (Florida)

VI. Schoolwide Poverty Threshold Waivers Allowing Flexibility for Schoolwide Programs in Title I Schools

Permitted Dunn School and Memorial School in Maine's Regional School Unit/Maine School Administrative District #15 (MSAD #15) to become Title I, Part A schoolwide program schools with percentages of low-income students of less than 40 percent.

Provision waived: Section 1114(a)(1) of the ESEA.

One Waiver applicant:

- MSAD #15

Permitted Piedmont Valley Elementary (Piedmont) in South Dakota to be eligible to operate a schoolwide program with less than 40 percent of students being from low-income families.

Provision waived: Section 1114(a)(1) of the ESEA.

One Waiver applicant:

- Meade School District 46–1

VII. Waivers Regarding Public School Choice Notice

Allowed SEAs to provide notice of public school choice options less than 14 days before the start of the school year to parents of eligible children attending schools that were newly identified for improvement for the 2011–2012 school year or made AYP in the previous year, but did not exit improvement status.

Provisions waived: Section 1116(b)(1)(E)(i) of the ESEA and 34 CFR 200.37(b)(4)(iv).

Four Waiver applicants:

- Minnesota Department of Education
- Nebraska Department of Education
- Oklahoma State Department of Education
- Wyoming Department of Education

VIII. Waivers Allowing LEAs To Provide SES, in Addition to Public School Choice, to Eligible Students in Title I Schools in the First Year of School Improvement and To Count the Costs of Both Toward Meeting the LEAs' "20 Percent Obligation"

New Applicants:

1. *Waiver applicant:* Wyoming Department of Education

- *Provisions waived:* Section 1116(b)(10) of the ESEA and 34 CFR 200.48.

- *Description of waiver:* For the 2010–2011 and 2011–2012 school year, permitted an LEA in Wyoming to offer SES, in addition to public school choice, to eligible students in a Title I school in the first year of school improvement and to count the costs of providing SES to these students toward meeting the LEA's "20 percent obligation."

Continuation Applicant:

1. *Waiver applicant:* Alabama Department of Education

- *Provisions waived:* Section 1116(b)(10) of the ESEA and 34 CFR 200.48.

- *Description of waiver:* For the 2012–2013 school year, permitted LEAs in Alabama to offer SES, in addition to public school choice, to eligible students in Title I schools in the first year of improvement and to count the costs of providing SES to these students toward meeting the LEA's "20 percent obligation."

IX. Waivers Allowing SEAs or LEAs To Approve Schools or LEAs in Need of Improvement To Become SES Providers

1. *Waiver applicant:* California Department of Education

- *Provisions waived:* 34 CFR 200.47(b)(1)(iv)(A) and (B).

- *Description of waiver:* Permitted California to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as a provider of SES during the 2012–2013 and 2013–2014 school year.

2. *Waiver applicant:* Montana Office of Public Instruction

- *Provisions waived:* 34 CFR 200.47(b)(1)(iv)(A) and (B).

- *Description of waiver:* Permitted Montana to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as a provider of SES during the 2012–2013 school year.

3. *Waiver applicant:* Nebraska Department of Education

- *Provisions waived:* 34 CFR 200.47(b)(1)(iv)(A) and (B).

- *Description of waiver:* Permitted Nebraska to approve a school or LEA

identified for improvement, corrective action, or restructuring to serve as a provider of SES during the 2011–2012 school year.

4. *Waiver applicant:* Wyoming Department of Education

- *Provisions waived:* 34 CFR 200.47(b)(1)(iv)(A) and (B).
- *Description of waiver:* Permitted Wyoming to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as a provider of SES for the 2010–2011 and 2011–2012 school years.

X. Authorizing an SEA To Waive the Carryover Limitation for an LEA Because of Its Receipt of Title I, Part A ARRA Funds

Waiver to permit an SEA to waive the carryover limitation more than once within three years for an LEA that needs the additional waiver because of its receipt of Title I, Part A ARRA funds.

Provision waived: Section 1127(b) of the ESEA.

Eight Waiver applicants:

- Maine Department of Education
- Michigan Department of Education
- Montana Office of Public Instruction
- Nebraska Department of Education
- Nevada Department of Education
- Ohio Department of Education
- Oklahoma State Department of Education
- South Carolina Department of Education

XI. Waiver of AYP Requirement for Annual Measurable Achievement Objectives (AMAOs)

1. *Waiver applicant:* Colorado Department of Education

- *Provision waived:* Section 3122(a)(3)(A)(iii) of the ESEA.
- *Description of waiver:* Granted a two-year waiver so that Colorado may use, for purposes of AMAO 3, the same targets used in the growth component of its State-developed differentiated recognition, accountability, and support system in reading, writing, and mathematics, in place of the State's AMOs.

XII. Waivers Related to Rural Programs

A. Waivers Allowing SEAs To Provide Equitable Services for Private School Students and Teachers Under the RLIS

Provision waived: Section 6222 of the ESEA.

Two Waiver applicants:

- Commonwealth of the Northern Mariana Islands Public School System
- Virgin Islands Department of Education

B. Waivers Allowing SEAs To Meet the Academic Achievement Assessment Requirement in an Alternative Manner Under RLIS

Provision waived: Section 6224(d) of the ESEA.

Two Waiver applicants:

- Commonwealth of the Northern Mariana Islands Public School System
- Virgin Islands Department of Education

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Dated: October 3, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

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DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 8401 of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2016 under the waiver authority in section 8401 of the Elementary and Secondary Education

Act of 1965, as amended by the Every Student Succeeds Act.¹

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during each calendar year.

FOR FURTHER INFORMATION CONTACT: Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260–2221 or by email: Kia.Weems@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In 2016, the Department granted a total of 111 waivers to States under the waiver authority in section 8401 of the ESEA, as amended by the ESSA. We granted:

(a) *73 waivers extending the period in which funds were available for obligation:* 66 waivers for school improvement activities, one waiver for Improving Teacher Quality, one waiver for Migrant Education, three waivers for 21st Century Community Learning Centers (21st CCLC), and two waivers for Mathematics and Science Partnerships;

(b) *32 waivers of requirements related to State academic standards or assessments:* Six waivers allowing substitution of standards or assessments and six waivers permitting SEAs or LEAs to refrain from reporting assessment or accountability determinations; and 26 waivers of the requirement that a State's assessment

¹ On December 10, 2015, the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), was signed into law. The ESEA waiver provisions in section 8401 of the ESEA, as amended by the ESSA, went into effect on that date. However, the Department awarded and administered FY 2016 formula grant funds in accordance with the ESEA as in effect on the day before the date of enactment of the ESSA (i.e., the requirements promulgated under the No Child Left Behind Act of 2001 (NCLB)) consistent with clarification from Congress in the Consolidated Appropriations Act, 2016. Accordingly, unless otherwise noted, all references to the ESEA in this notice refer to the ESEA, as amended by NCLB.