

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

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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.<sup>1</sup>

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](mailto: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

<sup>1</sup> 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.

system cover the full range of its academic content standards for speaking and listening;

(c) One waiver permitting an LEA to serve a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school;

(d) One waiver permitting local educational agencies (LEAs) to operate a Title I schoolwide program in a priority school or a focus school that has less than 40 percent poverty and is implementing a schoolwide intervention; and

(e) Four waivers allowing an SEA to waive the carryover limitation for an LEA that needs an additional waiver beyond what the SEA is authorized to grant.

## Waiver Data

### I. Extensions of the Obligation Period

A. Sixty-six waivers to extend the period of availability of School Improvement Grant (SIG) funds.

1. Extended the period of availability of fiscal year (FY) 2011 SIG funds awarded to two States under section 1003(g) of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)).

*Waiver Applicants:*

- New York State Education Department
- Wisconsin Department of Education

2. Extended the period of availability of FY 2012 SIG funds awarded to three States under section 1003(g) of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

*Waiver Applicants:*

- Missouri Department of Elementary and Secondary Education
- New Jersey Department of Education
- Texas Education Agency

3. Extended the period of availability of FY 2013 SIG funds awarded to seven States under section 1003(g) of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

*Waiver Applicants:*

- Iowa Department of Education
- Missouri Department of Elementary and Secondary Education
- Oregon Department of Education
- Puerto Rico Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Wisconsin Department of Education

4. Extended the period of availability of FY 2014 SIG funds awarded to eight

States under section 1003(g) of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

*Waiver Applicants:*

- Alabama State Department of Education
- Arizona Department of Education
- Georgia Department of Education
- Iowa Department of Education
- Kansas State Department of Education
- New Hampshire Department of Education
- North Dakota Department of Public Instruction
- Puerto Rico Department of Education

5. Extended the period of availability of FY 2016 SIG funds awarded to 46 States under section 1003(g) of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Arkansas Department of Education
- California 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
- Hawaii State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Iowa Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maine 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
- Montana Office of Public Instruction
- Nebraska Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction

- North Dakota Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- Wisconsin Department of Education

B. One waiver to extend the period of availability of funds for Improving Teacher Quality awarded under Title II, Part A of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

*Waiver Applicant:*

- New York State Department of Education

C. One waiver to extend the period of availability of funds for Migrant Education related activities awarded under section Title I, Part C of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

*Waiver Applicant:*

- New York State Department of Education

D. Three waivers extending the period of availability of funds for the 21st CCLC program under Title IV, Part B of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

1. Extended the period of availability of FY 2012 funds reserved under Title IV, Part B of the ESEA made available for the 21st CCLC program.

*Waiver Applicant:*

- North Dakota Department of Public Instruction

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

2. Extended the period of availability of FY 2013 funds reserved under Title IV, Part B of the ESEA made available for the 21st CCLC program.

*Waiver Applicants:*

- Hawaii State Department of Education
- Maryland State Department of Education

F. Two waivers to extend the period of availability of Mathematics and Science Partnerships funds.

1. Extended the period of availability of FY 2012 funds awarded to one State under Title II, Part B of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

*Waiver Applicant:*

- Illinois State Board of Education

2. Extended the period of availability of FY 2013 funds awarded to one State under Title II, Part B of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

*Waiver Applicant:*

- Illinois State Board of Education

### III. Waivers of Requirements Related to State Academic Standards and Assessments

A. One waiver allowing substitution of standards or assessments.

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

*Waiver Applicant:*

- Hawaii State Department of Education

*Description of Waiver:* One-year waiver for the 2015–2016 school year of the statutory and regulatory requirements under Title I, Part A of the ESEA, which require the State to apply the same academic achievement standards, and to use the same academic assessments, for all public school children in the State.

B. Three waivers of the requirement for an SEA to administer high-quality student academic assessments.

*Provisions waived:* Section 1111(b)(3)(A), (b)(3)(C)(vii), and (b)(3)(C)(ix)(I) of the ESEA.

*Waiver Applicants:*

- Alaska Department of Education and Early Development
- Montana Office of Public Instruction
- Nevada Department of Education

*Description of Waiver:* Waiver of the requirement that the SEA administer on an annual basis a set of high-quality student academic assessments in reading/language arts and mathematics to all students in grades three to eight and once in high school.

C. One waiver of reporting requirements related to standards and assessments.

*Provisions waived:* Section 1111(h)(1)(C)(i), (1)(C)(iii)–(iv), and (2)(B) of the ESEA.

*Waiver Applicant:*

- Alaska Department of Education and Early Development

*Description of Waiver:* Waiver for the 2015–2016 school year of the SEA and

LEA reporting requirements in the ESEA corresponding to the waived assessment requirements.

D. Twenty-six waivers allowing States to have assessments that did not assess all content standards.

*Provision waived:* Section 1111(b)(3)(C)(ii) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arkansas Department of Education
- California Department of Education
- Georgia Department of Education
- Idaho State Board of Education
- Iowa Department of Education
- Indiana Department of Education
- Kentucky Department of Education
- Kansas State Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Missouri Department of Elementary and Secondary Education
- Montana Office of Public Instruction
- Nevada Department of Education
- New York State Department of Education
- North Dakota Department of Public Instruction
- Puerto Rico Department of Education
- South Carolina Department of Education
- Texas Education Agency
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- Wisconsin Department of Education
- Wyoming Department of Education

*Description of Waiver:* Waiver from the requirement that the State's assessment system measure the State's speaking and listening standards.

### IV. Within-District Allocations

One waiver granting flexibility regarding within-district Title I allocations.

*Waiver Applicant:*

- New York State Department of Education

*Description of Waiver:* Permitted an LEA 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 does not rank sufficiently high to be served based solely on the school's poverty rate.

*Provisions waived:* Section 1113(a)(4)(B) and (c)(1) of the ESEA.

### V. School-Wide Poverty Threshold

One waiver allowing a Title I schoolwide program in a school below the 40 percent poverty threshold.

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

*Waiver Applicant:*

- Missouri Department of Elementary and Secondary Education

*Description of Waiver:* Waiver permitting LEAs to operate a schoolwide program in a priority school or a focus school that does not meet the schoolwide poverty threshold of 40 percent and is implementing a schoolwide intervention.

### VI. Authorizing an SEA To Waive the Carryover Limitation

A. Four waivers authorizing SEAs to waive the carryover limitation for an LEA more than once every three years.

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

*Waiver Applicant:*

- Indiana Department of Education  
*Description of Waiver:* One-year waiver to allow Indiana to grant the Indianapolis Public Schools, Edison Learning—Roosevelt College and Career Academy, and Dr. Robert H. Faulkner Academy a waiver of the carryover limitation with respect to the FY 2015 Title I, Part A funds even if the LEA received a carryover waiver of either its FY 2013 or FY 2014 Title I, Part A funds from the State.

*Waiver Applicant:*

- Michigan Department of Education  
*Description of Waiver:* One-year waiver allowed Michigan to grant the School District of the City of Pontiac and Saginaw City School District a waiver of the carryover limitation with respect to FY 2014 Title I, Part A funds even if the LEA received a carryover waiver of either its FY 2012 or FY 2013 Title I, Part A funds from the State.

*Waiver Applicant:*

- Washington Office of the Superintendent of Public Instruction  
*Description of Waiver:* One-year waiver allowed Washington to grant not more than 90 LEAs a waiver of the carryover limitation with respect to unexpended FY 2015 Title I, Part A funds even if an LEA received a carryover waiver of either its FY 2013 or FY 2014 Title I, Part A funds from the State.

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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

**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 2015 under the waiver authority in section 9401 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 flexibilities 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 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](mailto: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 2015, the Department granted waivers under ESEA flexibility to 43 States under the waiver authority in section 9401 of the ESEA, in exchange for rigorous and comprehensive State-developed plans designed to improve student academic achievement and increase the quality of instruction. An additional 93 waivers that were not part of ESEA flexibility also were granted under the waiver authority in section 9401 of the ESEA. We granted:

a. Ten waivers under ESEA flexibility to each of 43 States granting flexibility from ESEA requirements to improve student academic achievement and increase the quality of instruction:

1. Allowing SEAs flexibility to select one of three options for setting new ambitious, but achievable annual measurable objectives (AMOs);
2. Allowing flexibility in implementation of school improvement requirements to relieve local educational agencies (LEAs) of the requirement to identify schools for improvement, corrective action, or restructuring, as appropriate, and to take certain improvement actions in identified schools;
3. Allowing flexibility in implementation of LEA improvement requirements to relieve SEAs of the requirement to identify LEAs for improvement or corrective action, as appropriate, and to take certain improvement actions for identified LEAs;
4. Granting flexibility for rural LEAs;
5. Permitting LEAs to operate a schoolwide program in a priority school or a focus school that does not meet the 40 percent poverty threshold and is implementing a schoolwide intervention;
6. Allowing SEAs flexibility to distribute school improvement funds to LEAs for use in priority and focus schools;
7. Allowing funds reserved for State awards program to go to any reward school;
8. Relating to highly qualified teacher (HQT) improvement plan requirements;
9. Relating to limitations on the transferability of certain funds; and
10. Permitting SEAs flexibility to award School Improvement Grant (SIG) funds to an LEA to implement one of the four SIG models in any priority school.

In addition to waiving the 10 provisions listed above, the Department granted three optional waivers to 43 States under ESEA flexibility related to the following:

1. 21st Century Community Learning Centers (21st CCLC) requirements, allowing SEAs 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 is not in session;
2. Requirements to make adequate yearly progress (AYP) determinations; and
3. Requirements pertaining to Title I, Part A within-district allocations;
  - b. Forty-five waivers extending the period in which funds were available for obligation: 40 waivers for school improvement activities, one waiver for Consolidated Grant funds for Insular Areas, one waiver for State assessment activities, and three waivers extending the period for SIG carryover funds;
  - c. One waiver granting LEAs additional time to meet teacher and principal evaluation requirements for cohort 5 SIG schools;
  - d. Five waivers allowing SEAs to approve schools or LEAs identified as in need of improvement to become supplemental educational services (SES) providers;
  - e. Ten waivers of requirements pertaining to State academic standards or assessments: Four waivers allowing substitution of standards or assessments and six waivers exempting SEAs or LEAs from reporting assessment or accountability determinations;
  - f. Fourteen waivers of the third of three annual measureable achievement objectives (AMAOs 3) under Title III, due to lack of assessment data in the 2014-2015 school year;
  - g. Two waivers allowing SEAs flexibility to distribute section 1003(a) funds to LEAs for use in priority and focus schools;
  - h. Five waivers of the requirement to make AYP determinations;
  - i. Six waivers allowing LEAs to carry out significant education reforms to improve student achievement;
  - j. Two waivers authorizing an SEA to waive the carryover limitation for an LEA that needs an additional waiver;
  - k. One waiver of the requirement to provide parents notice of public school choice options at least 14 days before the start of the school year;
  - l. One waiver pertaining to school support and recognition allowing flexibility in the use of funds reserved for State awards program to go to any reward school; and