

**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 2011 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).

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 2011.

**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 2011, the Department granted a total of 157 waivers under the waiver authority in section 9401 of the ESEA. We granted:

(a) 67 Waivers extending the period in which funds were available for obligation: 28 waivers extending the period for ESEA State-administered formula grant programs that received fiscal year (FY) 2009 funds made available under Public Law 111-8, the Department of Education Appropriations Act, 2009; 25 waivers for ESEA State-administered formula grant programs that received FY 2009 funds made available under Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA); and 14 waivers for School Improvement Grants (SIG) funds;

(b) 30 waivers relating to SIG program requirements: Three waivers of the requirement for SEAs to carry over 25 percent of their FY 2009 funds, combine those funds with FY 2010 SIG funds, and award those funds to eligible local educational agencies (LEAs); four waivers pertaining to SEAs' requests to carry over FY 2009 and FY 2010 SIG funds and to award those funds to LEAs through a competition conducted during the 2011-2012 school year; four waivers based on the determination that an SEA would not be able to submit an approvable application prior to September 30, 2011, and, as a result, absent the waiver, its FY 2010 SIG funds would expire and the SEA would not be able to support interventions in its persistently lowest-achieving schools; and 19 waivers granting additional time to meet the teacher and principal evaluation requirement for schools in the first (2010-2011 school year) and second (2011-2012 school year) cohorts of SIG grants;

(c) Five waivers of requirements related to State academic assessments and school improvement: Three waivers allowing LEAs to waive the requirement to use State academic assessments and other academic indicators to review progress to determine whether a school is making adequate yearly progress (AYP); one waiver of the requirement to ensure that the results of State academic assessments are available to LEAs before the beginning of the school year following the one in which the assessments were administered; and one waiver of the deadline to identify schools for improvement, corrective action, or restructuring;

(d) 41 waivers of requirements related to supplemental educational services (SES) and public school choice: 22 waivers to permit SEAs to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as an SES provider; 16 waivers of the requirement for LEAs to spend an amount equal to 20 percent of their Title I allocation on SES and transportation for public school choice; and three waivers of the requirement for LEAs to provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the school year;

(e) Nine waivers relating to the requirement that each State plan demonstrate the adoption of challenging academic content standards and challenging student academic achievement standards: six waivers of the annual requirement that the assessments administered be aligned with the State's academic content and achievement standards; two waivers of

the requirement for States to use the same academic assessments to measure the achievement of all students and to determine AYP; and one waiver of the requirement to include all students enrolled at the time of testing in the participation rate calculations used to determine AYP;

(f) Two waivers relating to determining eligible school attendance areas: One waiver of the requirement that an eligible school attendance area have a percentage of children from low-income families that is at least as high as the percentage of children from low-income families served by the LEA as a whole;

(g) One waiver of the requirement that not more than five percent of funds be used to provide financial incentives and rewards to teachers;

(h) One waiver to allow an LEA to operate a schoolwide program even though its percentage of students from low-income families is less than 40 percent; and

(i) One waiver of the Teacher Incentive Fund (TIF) program absolute priority requirement in the notice inviting applications (NIA) that requires each TIF grantee to develop a rigorous evaluation system for teachers and principals, and of one of the five core elements in the NIA.

**Waiver Data****I. Extensions of the Obligation Period**

*A. Waivers granted for ESEA State-administered formula grant programs that extended until September 30, 2012, the period of availability for FY 2009 funds awarded under Public Law 111-8, the Department of Education Appropriations Act, 2009.*

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

*Waiver applicants, approved dates, and affected programs:*

- Arizona Department of Education, December 15, 2011, Title I, Part A; Title I, Part C; Title II, Part B; Title II, Part D; and Title VI, Section 6111;
- California Department of Education, December 19, 2011, Title II, Part D;
- Colorado Department of Education, November 29, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part C; Title II, Part A; Title II, Part D; Title III, Part A; Title IV, Part A; Title IV, Part B; and Title VI, Section 6111;
- District of Columbia Office of the State Superintendent of Education, December 15, 2011, Title I, Part A; Title I, Part D; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A; Title IV, Part B; and Title VI, Section 6111;

- Florida Department of Education, December 15, 2011, Title II, Part B; Title II, Part D; and Title IV, Part A;
  - Indiana Department of Education, November 28, 2011, Title I, Part C; Title II, Part D; and Title IV, Part A;
  - Kansas Department of Education, November 14, 2011, Title IV, Part A; and Title IV, Part B;
  - Louisiana Department of Education, December 15, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part C; Title I, Part D; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; and Title IV, Part A;
  - Maine Department of Education, December 19, 2011, Title I, Part C;
  - Maryland Department of Education, November 21, 2011, Title I, Part A; Title II, Part B; Title II, Part D; Title III, Part A; and Title IV, Part A;
  - Michigan Department of Education, November 29, 2011, Title I, Part A; Title I, Part D; Title II, Part D; and Title IV, Part A;
  - Minnesota Department of Education, November 14, 2011, Title I, Part A; Title I, Part C; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A; and Title VI, Section 6111;
  - Nebraska Department of Education, November 22, 2011, Title I, Part A; Title I, Part C; Title I, Part C (Migrant Education Consortium Incentive Grants); Title I, Part C (Migrant Education Data Quality Grants); Title II, Part A; Title II, Part D; Title III, Part A; and Title IV, Part A;
  - Nevada Department of Education, December 15, 2011, Title I, Part A; and Title II, Part D;
  - New Hampshire Department of Education, December 15, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part C; Title I, Part D; Title II, Part A; Title II, Part D; Title III, Part A; Title IV, Part A; and Title IV, Part B;
  - New Jersey Department of Education, November 28, 2011, Title I, Part C (Migrant Education Consortium Incentive Grants); Title I, Part C (Migrant Education Student Information Exchange Data Quality Grants); and Title IV, Part A;
  - New Mexico Public Education Department, December 19, 2011, Title I, Part B, Subpart 3; Title II, Part D; and Title IV, Part A;
  - North Carolina Department of Public Instruction, November 14, 2011, Title I, Part C; and Title IV, Part A;
  - North Dakota Department of Public Instruction, December 19, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title II, Part A; Title II, Part B; Title II, Part D; Title IV, Part A; and Title IV, Part B;
  - Oklahoma State Department of Education, November 28, 2011, Title IV, Part A;
  - Puerto Rico Department of Education, December 19, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part D; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A; Title IV, Part B; and Title VI, Section 6111;
  - Rhode Island Department of Education, November 28, 2011, Title II, Part D;
  - South Carolina Department of Education, December 18, 2011, Title II, Part B;
  - Tennessee Department of Education, November 28, 2011, Title I, Part A (including funds reserved for State Academic Achievement Awards program authorized in section 1117(c)(2)(A) of the ESEA and school improvement activities authorized in section 1003(a) of the ESEA); Title II, Part D; and Title IV, Part A;
  - Vermont Agency of Education, December 15, 2011, Title IV, Part A;
  - Virginia Department of Education, December 15, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part D; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A; and Title IV, Part B;
  - Washington Office of the Superintendent of Public Instruction, December 15, 2011, Title I, Part B, Subpart 3; and Title II, Part A; and
  - Wyoming Department of Education, December 19, 2011, Title I, Part A.
- B. Waivers granted for ESEA State-administered formula grant programs that extended until September 30, 2012, the period of availability for FY 2009 funds awarded under Public Law 111–5, ARRA.*
- Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).
- Waiver applicants, approved dates, and affected programs:*
- Arizona Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - California Department of Education, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Colorado Department of Education, November 29, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - District of Columbia Office of the State Superintendent of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Florida Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Indiana Department of Education, November 28, 2011, Title I, Part A (ARRA);
  - Kansas Department of Education, November 14, 2011, Title I, Part A (ARRA);
  - Louisiana Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Maine Department of Education, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Maryland Department of Education, November 21, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Michigan Department of Education, November 29, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Minnesota Department of Education, November 14, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Nebraska Department of Education, November 22, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Nevada Department of Education, December 15, 2011, Title I, Part A (ARRA);
  - New Hampshire Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - New Jersey Department of Education, November 28, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - New Mexico Public Education Department, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - North Carolina Department of Public Instruction, November 14, 2011, Title I, Part A (ARRA);
  - North Dakota Department of Public Instruction, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Puerto Rico Department of Education, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Tennessee Department of Education, November 28, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Vermont Agency of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Virginia Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
  - Washington Office of the Superintendent of Public Instruction, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA); and
  - Wyoming Department of Education, December 19, 2011, Title II, Part D (ARRA).
- C. Waivers of SIG Requirements.*
1. Extended the period of availability of FY 2008 SIG funds awarded under section 1003(g) of the ESEA.

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

*Waiver applicants and approved dates:*

- Alabama Department of Education, January 26, 2011;
- Colorado Department of Education, January 18, 2011;
- Illinois State Board of Education, January 26, 2011;
- Maryland Department of Education, January 26, 2011;
- Massachusetts Department of Elementary and Secondary Education, January 18, 2011;
- Massachusetts Department of Elementary and Secondary Education, May 17, 2011 (second extension);
- New Hampshire Department of Education, April 13, 2011;
- New Jersey Department of Education, January 26, 2011;
- Ohio Department of Education, January 26, 2011; and
- Puerto Rico Department of Education, January 26, 2011.

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

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

*Waiver applicants and approved dates:*

- Arizona Department of Education, January 24, 2011.

3. Extended the period of availability of FY 2010 SIG funds awarded under section 1003(g) of the ESEA.

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

*Waiver applicants and approved dates:*

- Missouri Department of Elementary and Secondary Education, September 20, 2011;
- Nebraska Department of Education, July 25, 2011; and
- Pennsylvania Department of Education, December 13, 2011.

## II. Waivers of SIG Requirements

A. *Waivers of SIG program final requirement to carry over 25 percent of FY 2009 funds.* The waivers permitted applicants to combine those funds with FY 2010 SIG funds and award those funds to eligible LEAs consistent with the final requirements.

*Provisions waived:* Section 1003(g) of the ESEA; 75 FR 66363.

*Waiver applicants and approved dates:*

- Minnesota Department of Education, June 13, 2011;
- Montana Office of Public Instruction, August 2, 2011; and

- New Mexico Public Education Department, March 28, 2011.

B. *Waivers to carry over SIG funds.* The waiver allowed States to carry over their FY 2009 and FY 2010 SIG funds and to award those funds to LEAs through a competition conducted during the 2011–2012 school year because their LEAs did not have the capacity to effectively plan and implement intervention models for the 2011–2012 school year in such a short timeframe.

*Provision waived:* 75 FR 66363.

*Waiver applicants and approved dates:*

- Alabama Department of Education, September 20, 2011;
- Bureau of Indian Education, September 20, 2011;
- California Department of Education, September 20, 2011; and
- Missouri Department of Elementary and Secondary Education, September 20, 2011.

C. *Waivers of SIG program requirement that, to receive a FY 2010 SIG grant, an SEA must have submitted an approvable application by a date certain.* The waivers provided SEAs additional time to submit their applications.

*Provisions waived:* Section 1003(g)(4) of the ESEA; 75 FR 66363.

*Waiver applicants and approved dates:*

- Hawaii Department of Education, September 21, 2011;
- Rhode Island Department of Education, September 20, 2011;
- Tennessee Department of Education, September 20, 2011; and
- Vermont Agency of Education, September 21, 2011.

D. *Waivers granting additional time to meet teacher and principal evaluation requirements (cohorts 1 and 2 SIG schools).* The waivers allowed SEAs to permit an LEA that was implementing a transformation model with SIG funds during the 2010–2011 school year to have additional time to meet the teacher and principal evaluation requirement in schools that were not able to do so that year.

*Provisions waived:* Section 1003(g) of the ESEA; Section I.A.2(d)(1)(i)(B) of the SIG final requirements.

*Waiver applicants and approved dates:*

- Alaska Department of Education and Early Development, September 15, 2011;
- Arizona Department of Education, September 15, 2011;
- Arkansas State Department of Education, September 15, 2011;
- Delaware Department of Education, October 5, 2011;
- Iowa Department of Education, September 15, 2011;

- Kansas Department of Education, September 20, 2011;
- Kentucky Department of Education, September 19, 2011;
- Maine Department of Education, November 4, 2011;
- Montana Office of Public Instruction, September 15, 2011;
- Nevada Department of Education, November 14, 2011;
- New Hampshire Department of Education, November 4, 2011;
- New Mexico Public Education Department, November 4, 2011;
- North Dakota Department of Public Instruction, September 15, 2011;
- Ohio Department of Education, September 15, 2011;
- Oklahoma State Department of Education, October 5, 2011;
- South Carolina Department of Education, September 29, 2011;
- South Dakota Department of Education, September 27, 2011;
- Utah State Office of Education, September 20, 2011; and
- Virginia Department of Education, October 5, 2011.

## III. Waivers Related to State Academic Assessment and School and LEA Improvement

A. *Waivers of the Requirements to Make AYP Determinations.*

1. *Waiver applicant: Tennessee Department of Education*

- *Provisions waived:* Section 1116(a)(1)(A) and (c)(1)(A) of the ESEA; 34 CFR 200.30 and 200.50(a).

• *Date waiver granted:* January 24, 2011.

• *Description of waiver:* A waiver of the requirements to use the State's academic assessments and other academic indicators described in the State plan to review progress to determine whether Harpeth High School and Houston County High School were making AYP for the 2009–2010 school year.

2. *Waiver applicant: West Virginia Department of Education*

- *Provisions waived:* Section 1116(a)(1)(A) of the ESEA; 34 CFR 200.30.

• *Date waiver granted:* August 1, 2011.

• *Description of waiver:* A one-year waiver of the requirement to use results of the statewide assessment to make AYP determinations for Kenova Elementary School.

B. *Waivers of SEA Requirement to Make Academic Assessment Results Available to LEAs.*

1. *Waiver applicant: Kentucky Department of Education*

- *Provision waived:* Section 1116(a)(2) of the ESEA.

- *Date waiver granted:* March 25, 2011.

- *Description of waiver:* A one-year waiver of the requirement in section 1116(a)(2) of the ESEA that a State make available the results of State academic assessments to LEAs before the beginning of the school year following the one in which the assessments were administered.

C. *Waivers to Reverse Timeline for Offering SES and Public School Choice.* The waivers allowed LEAs to offer SES to eligible Title I schools in year one of school improvement instead of public school choice, and count the costs of providing SES to these students toward the LEAs' 20 percent obligation.

*Provisions waived:* Section 1116(b)(10) of the ESEA; 34 CFR 200.48. *Waiver applicants and approved dates:*

- Alabama Department of Education, July 25, 2011;
- Alaska Department of Education, May 6, 2011;
- California Department of Education, July 25, 2011;
- Connecticut State Department of Education, November 4, 2011;
- Delaware Department of Education, July 25, 2011;
- Maryland Department of Education, July 28, 2011;
- Massachusetts Department of Elementary and Secondary Education, June 30, 2011;
- Minnesota Department of Education, August 15, 2011;
- Missouri Department of Elementary and Secondary Education, September 15, 2011;
- New Mexico Public Education Department, November 4, 2011;
- North Carolina Department of Public Instruction, August 29, 2011;
- Ohio Department of Education, August 23, 2011;
- Oklahoma State Department of Education, September 22, 2011;
- South Dakota Department of Education, June 29, 2011;
- Virginia Department of Education, July 25, 2011; and
- Washington Office of the Superintendent of Public Instruction, July 25, 2011.

D. *Waivers of Requirement to Identify Schools for Improvement Before the Start of the School Year.*

1. *Waiver applicant:* Washington Office of the Superintendent of Public Instruction

- *Provisions waived:* Section 1116(b)(1)(B) of the ESEA; 34 CFR 200.32(a)(2).
- *Date waiver granted:* June 30, 2011.
- *Description of waiver:* A one-time waiver of the requirement to identify

schools for improvement, corrective action, or restructuring no later than the beginning of the school year following the failure to make AYP. This waiver applied only to high schools.

E. *Waivers of Deadline Requirement for Public School Choice for Schools Identified for School Improvement.* Specific LEAs were provided a one-year waiver of the requirement that they provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the school year.

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

*Waiver applicants and approved dates:*

- Colorado Department of Education, May 6, 2011;
- Kentucky Department of Education, March 25, 2011; and
- Washington Office of the Superintendent of Public Instruction, June 30, 2011.

#### IV. Waivers Allowing SEAs To Approve Schools or LEAs Identified for Improvement To Become SES Providers and Waivers Permitting Certain LEAs Identified for Improvement or Corrective Action To Apply to Their SEA To Serve as an SES Provider in the 2011–2012 School Year

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

*Waiver applicants and approved dates:*

- Alaska Department of Education, May 6, 2011;
- California Department of Education, July 25, 2011;
- Colorado Department of Education, July 25, 2011;
- Connecticut Department of Education, November 4, 2011;
- Delaware Department of Education, July 25, 2011;
- Florida Department of Education, September 28, 2011;
- Massachusetts Department of Elementary and Secondary Education, June 30, 2011;
- Minnesota Department of Education, August 15, 2011;
- Missouri Department of Elementary and Secondary Education, September 15, 2011;
- Montana Office of Public Instruction, July 25, 2011;
- New Mexico Public Education Department, November 4, 2011;
- New York State Education Department, February 10, 2011;
- North Dakota Department of Public Instruction, June 6, 2011;
- Ohio Department of Education, August 23, 2011;

- Oklahoma State Department of Education, May 3, 2011;
- Rhode Island Department of Education, June 30, 2011;
- South Carolina Department of Education, August 1, 2011;
- South Dakota Department of Education, June 29, 2011;
- Twin Rivers Unified School District, April 5, 2011 (a two-year waiver to allow Twin Rivers Unified School District to be eligible to apply to serve as an SES provider in the 2010–2011 and 2011–2012 school years even though it was identified for improvement);
- Virginia Department of Education, July 25, 2011;
- Washington Office of the Superintendent of Public Instruction, July 25, 2011; and
- Wisconsin Department of Public Instruction, November 4, 2011.

#### V. Waiver of State Plan Requirements Relating to Academic Assessments

A. *Waivers of the Requirements that Annual Assessments Align with State Academic Content and Achievement Standards and that All Students Be Assessed in Mathematics in High School.*

1. *Waiver applicant:* Florida Department of Education

- *Provisions waived:* Section 1111(b)(3)(C)(v)(1)(cc) and (b)(3)(C)(ix) of the ESEA; 34 CFR 200.5(a)(2)(ii) and 200.6.

- *Date waiver granted:* January 19, 2011.

- *Description of waiver:* A one-time waiver of the requirement to assess all students at least once in grades 10 through 12 in mathematics.

2. *Waiver applicant:* Kansas Department of Education

- *Provisions waived:* Section 1111(b)(3)(C)(ii) of the ESEA; 34 CFR 200.2(b)(3)(i).

- *Date waiver granted:* April 5, 2011.

- *Description of waiver:* A one-year waiver, with respect to McPherson Unified School District, of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the assessments administered to be aligned with the State's academic content and achievement standards.

3. *Waiver applicant:* Tennessee Department of Education

- *Provisions waived:* Section 1111(b)(3)(A), (b)(3)(C)(v)(II), and (b)(3)(C)(vii) of the ESEA; 34 CFR 200.2(a)(1), 200.5(a)(2), and 200.5(b).

- *Date waiver granted:* January 24, 2011.

- *Description of waiver:* A waiver of the requirement to assess Harpeth High School and Houston County High

School students annually in reading/language arts, mathematics, and science for the 2009–2010 school year.

4. *Waiver applicant: West Virginia Department of Education*

- *Provisions waived:* Section 1111(b)(3)(A) of the ESEA; 34 CFR 200.2(a)(1).

- *Date waiver granted:* August 1, 2011.

- *Description of waiver:* A one-year waiver of the requirement to assess students in reading/language arts, mathematics, and science at Kenova Elementary School, which closed during the spring 2011 testing window because of structural safety issues caused by flooding.

B. *Waivers of the State Requirements to Use the Same Academic Measurement Assessments to Measure the Achievement of All Students and to Determine AYP.*

*Provisions waived:* Section 1111(b)(3)(A) and (b)(3)(C)(i) of the ESEA; 34 CFR 200.2(b)(1).

*Waiver applicants and approved dates:*

- Kansas Department of Education, April 5, 2011 (a one-year waiver with respect to McPherson Unified School District of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the State to use the same academic assessments to measure the achievement of all students and to determine AYP); and

- Washington Office of the Superintendent of Public Instruction, June 30, 2011. A one-year waiver of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the State to use the same academic assessments to measure the achievement of all students and to determine AYP.

C. *Waivers of the Requirement to Include All Students Enrolled at the Time of Testing in the Participation Rate Calculations.*

1. *Waiver applicant: Florida Department of Education*

- *Provisions waived:* Section 1111(b)(2)(I)(ii) of the ESEA; 34 CFR 200.20(c)(1)(i).

- *Date waiver granted:* January 19, 2011.

- *Description of waiver:* A waiver of the requirement to include all students enrolled at the time of testing in the participation rate calculations used to determine AYP. This waiver authorized Florida to exclude students who took Algebra I as 6th, 7th, or 8th graders during school years 2007–2008 through 2009–2010 from participation rate calculations used in determining AYP based on assessment results from the relevant school year.

## VI. Waivers of Eligible School Attendance Area Requirements

A. *Waivers of Requirements for Determining Eligible School Attendance Areas.*

1. *Waiver applicant: Keene School District*

- *Provision waived:* Section 1113(a)(2)(B) of the ESEA.

- *Date waiver granted:* June 29, 2011.

- *Description of waiver:* A waiver for four years, beginning in school year 2011–2012, of the requirements concerning Title I school eligibility to ensure continuity of Title I services for eligible children in Daniels Elementary School and Symonds Elementary School. This waiver enabled both schools to continue offering Title I programs to their eligible students without the interruption caused by small demographic changes that affected eligibility for Title I.

B. *Waiver of the Limitation on Reserving Funds for Financial Incentives and Rewards.*

1. *Waiver applicant: Hillsborough County Public Schools*

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

- *Date waiver granted:* August 1, 2011.

- *Description of waiver:* A one-year waiver of the 5 percent cap on the amount of Title I funds that an LEA reserve for financial incentives and awards so that Hillsborough County Public Schools could reserve up to 8.8 percent of their FY 2011 Title I, Part A allocation for such purposes.

## VII. Waiver of the Requirements for Schoolwide Programs

A. *Waiver of the 40 Percent Poverty Threshold for Schoolwide Programs.*

1. *Waiver applicant: Aberdeen Public School District 6–1*

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

- *Date waiver granted:* November 4, 2011.

- *Description of waiver:* A waiver to allow Simmons Elementary School to operate a schoolwide program even though its percentage of students from low-income families was less than 40 percent, effective for four years or until the reauthorization of the ESEA, whichever came first.

## VIII. Waivers Regarding Teacher Incentive Fund (TIF) Requirements

A. *Waiver of Application Requirements for the TIF Program.*

1. *Waiver applicant: Community Training and Assistance Center*

- *Provision waived:* Section 9401 of the ESEA.

- *Date waiver granted:* July 11, 2011.

- *Description of waiver:* Waiver of two requirements of TIF: (1) Absolute Priority 1 in the NIA that required each TIF grantee to develop a rigorous evaluation system for teachers and principals that took into account student growth as a significant measure and multiple classroom observations; and (2) one of the required five core elements in the NIA, each of which was to have been in place before a grantee could make incentive payments using TIF funds (75 FR 28741).

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, 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](http://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 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 2013 under the waiver authority of the Elementary and