



# SREB policy brief

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## Federal Waivers Grant Flexibility to *No Child Left Behind* in SREB States

Thirteen of the 16 SREB states began 2013 with greater flexibility in meeting federal public school accountability requirements — having been granted waivers in late 2012 to certain provisions of the federal *No Child Left Behind Act of 2001*. The waivers exempt states from key policies intended to hold schools accountable for raising student achievement by 2014.

In exchange for flexibility, the states agreed to implement new reforms not currently in the law. These include adopting college- and career-readiness standards and assessments, teacher and principal evaluation systems partially based on student achievement, differentiated accountability that gives the most support to low-achieving schools and districts, and a unified accountability system. The 13 states include Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina,

Oklahoma, South Carolina, Tennessee and Virginia. Alabama and West Virginia received one-year waivers but hope to gain greater flexibility in the months ahead from pending waiver requests to the U.S. Department of Education. The remaining state, Texas, has announced plans to file a waiver request.

State leaders say the waivers became necessary soon after 2007, when federal lawmakers did not reauthorize the latest version of the Elementary and Secondary Education Act (ESEA) — better known as *No Child Left Behind (NCLB)*. While the waivers relieve states from certain provisions and consequences of the law, they also require major policy changes to school accountability — ones that will be far-reaching. This *SREB Policy Brief* updates leaders and lawmakers on the impact of the waivers and what they mean for schools and students.

### Why do states need waivers?

*NCLB* requires **100 percent of students** to meet state standards in reading and mathematics by scoring at the “proficient” level or higher on state assessments by 2014. It was apparent, however, soon after the law was passed that states would need relief from this ambitious goal. Although an SREB 2005 report, *Focusing on Student Performance Through Accountability*, noted that 71 percent of schools in SREB states had made adequate yearly progress toward the 2014 goal in 2004, the Center on Education Policy estimated that the percentage making adequate

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yearly progress was 45 percent — a drop of 26 percentage points — by 2011. Did SREB states actually lose ground? Not according to most state leaders, who say the problem lies with *NCLB* policies for measuring student performance and school progress.

Under *NCLB*, each state must set **annual targets** for student performance that move incrementally toward the 2014 goal. The law imposes a system of rewards and consequences to hold schools accountable for meeting the annual targets, both overall and for selected student groups (those from certain racial and ethnic groups, those from low-income families, students with disabilities, and English-language learners). Even though many states could meet the early benchmarks for progress, the rising targets meant it was hard for states to keep up expectations. Currently, no state in the nation is expected to meet the final target, and all states face significant consequences.

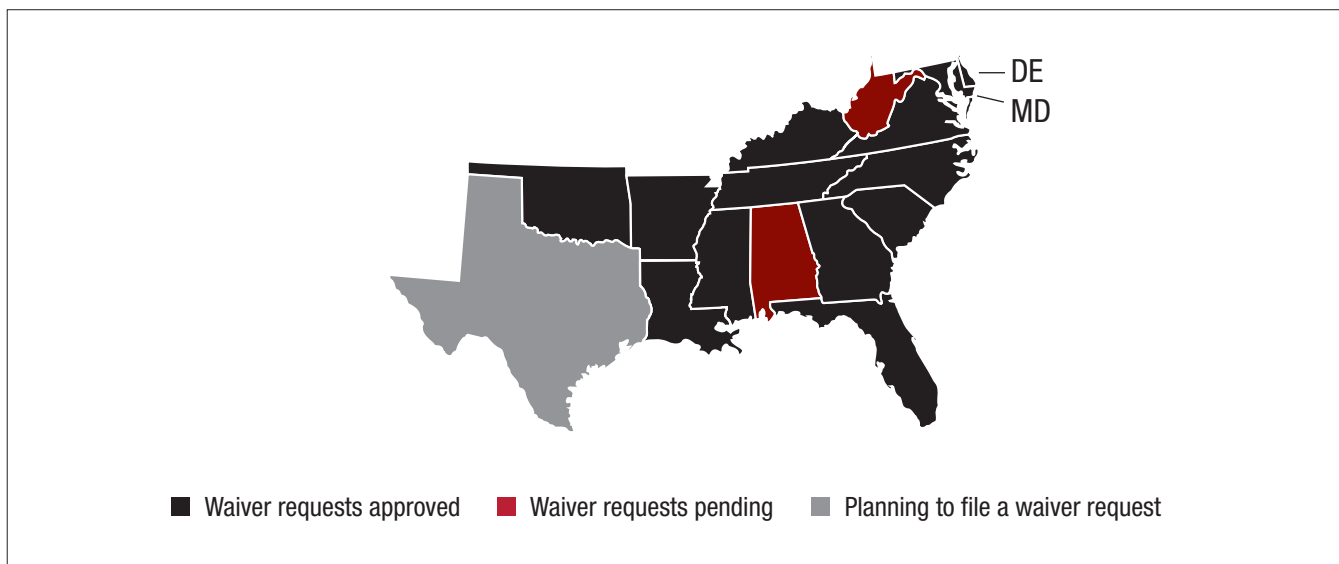
In addition, *NCLB* is specific in calling for states **to meet each one of the law's elements**. States must increase the percentage of students scoring at state

proficient levels each year — ultimately culminating in 100 percent by 2014. They must set and meet annual targets — known technically as Annual Measurable Objectives (AMOs) — for the percentage of students scoring at the proficient level on state assessments. These AMOs must escalate regularly to ensure that the percentage of students meeting state standards remains on pace to meet the 2014 goal. If one student group (for example, students with disabilities) does not meet the AMO, the school is **not** considered to be making adequate yearly progress. Schools are expected to meet their AMOs for all students **and for each student group**. Otherwise, the school is considered “low performing.”

*NCLB*'s funding source draws from ESEA's Title I (Part A) aid program to states **to support children from low-income families**. The U.S. Department of Education concentrates Title I funds to high-poverty, low-performing schools and toward specific school improvement actions that enhance these schools' chances of meeting the 2014 goal. If Title I schools do not make adequate yearly progress for two consecutive years, they must offer supplemental tutoring

Figure 1

## SREB States Requesting Waivers for Various Provisions of *No Child Left Behind*, December 2012



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and provide students the option to transfer to higher quality schools in the district — *NCLB*'s version of “public school choice.” If Title I schools continue to miss annual targets after taking these actions, they can be placed in “corrective action” through more stringent interventions and, eventually, they can be targeted for total school restructuring.

The law, in fact, requires the same school improvement actions in all low-performing schools — not just Title I schools — even though the needs of individual schools may vary. Also, restrictions on federal Title I aid reduce funding for many schools not considered “high-poverty.” This means states must pick up the cost for these actions in many low-performing but not high-poverty schools, which are not covered by Title I to ensure they are able to progress toward the 2014 goal. If student performance does not meet expectations in many schools within a state, it likely means that state resources will be stretched to fund school improvement actions to comply with the law.

SREB's 2005 report tracked student performance under *NCLB* in the immediate years after the law was passed. At that time, SREB states had succeeded in raising the percentages of students meeting state standards, both overall and for student groups. However, states were already struggling to accelerate performance gains to ensure they could approach 100 percent of children meeting state standards by

2014. The 2005 report forecast that the number of schools failing to make adequate yearly progress would rise sharply as annual targets increased and as **every student** was required to reach a high level of achievement.

In 2007, the leadership of the National Governors Association, the Council of Chief State School Officers and the National Association of State Boards of Education pressed Congress to make changes to *NCLB* when it was due for reauthorization. The three organizations prepared a joint statement to Congress recommending specific legislative revisions to make the law more effective. They sought broader measures for rating schools, more control over Title I funding, and the power to differentiate school improvement actions based on the individual needs of each school. Overall, they desired greater flexibility to allow for state-based reforms that would raise student proficiency levels toward ambitious but achievable goals.

In 2011, after five years of waiting for Congress to reauthorize *NCLB*, U.S. Secretary of Education Arne Duncan responded, “We want to get out of the way and give states and districts flexibility to develop locally-tailored solutions to their educational challenges.” He announced a flexibility package for states to request waivers in exchange for state-based plans to implement specific reforms in curriculum standards, assessments and accountability.

## What does flexibility offer to SREB states?

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Under the flexibility offer made by Secretary Duncan, states may request waivers of any or all of the several requirements in the law. The waivers are intended to provide relief from *NCLB*'s primary 2014 goals and the consequences schools and districts face for not making adequate yearly progress toward them. Additionally, waivers may remove restrictions on the uses of Title I aid that limit it to funding specific school improvement actions and to schools with the highest levels of students from low-income families. (See table on Pages 4-5.)

Secretary Duncan waived *NCLB* requirements for SREB states for the following provisions:

- 100 percent of students meet states standards — score at proficient — on state assessments in reading and math
- Identification of and specific intervention in schools not making adequate yearly progress
- Identification of and specific intervention in districts not making adequate yearly progress

## NCLB Flexibility Waivers in SREB States

NCLB Provisions	AL	AR	DE	FL	GA	KY	LA	MD	MS	NC	OK	SC	TN	VA	WV	NCLB Provisions
2014 timeline for setting Annual Measurable Objectives (AMOs)	Annual targets for 2010-2011 will not escalate for the 2011-2012 school year.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Annual targets for 2010-2011 will not escalate for the 2011-2012 school year.	2014 timeline for setting Annual Measurable Objectives (AMOs)
Reserved funding for school improvement in Title I schools <sup>1</sup> that consistently fail to make adequate yearly progress (AYP) <sup>2</sup>		Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>	Partially waived <sup>3</sup>		Reserved funding for school improvement in Title I schools <sup>1</sup> that consistently fail to make adequate yearly progress (AYP) <sup>2</sup>
Required 40 percent poverty threshold for eligibility of certain Title I funds and interventions		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		Required 40 percent poverty threshold for eligibility of certain Title I funds and interventions
Rules that enforce Highly Qualified Teacher plans in Title I schools		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		Rules that enforce Highly Qualified Teacher plans in Title I schools
School Improvement Grants limited to Title I schools only		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		School Improvement Grants limited to Title I schools only
Requirement to identify schools and districts failing to make AYP for specific improvement actions		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		Requirement to identify schools and districts failing to make AYP for specific improvement actions
Limitations on the transferability of Title I funds from one covered program into another		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		Limitations on the transferability of Title I funds from one covered program into another
Financial reward for high academic achievement limited to Title I schools only		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		Financial reward for high academic achievement limited to Title I schools only
Rules for calculating and reporting AYP		✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		Rules for calculating and reporting AYP
Restrictions to 21st Century Community Learning Centers that limit operations to non-school hours			✓	✓		✓	✓		✓	✓	✓		✓	✓		Requirement to identify schools and districts failing to make AYP for specific improvement actions
Required within-district allocations to Title I schools in rank order of poverty		✓	✓				✓	✓	✓	✓		✓				Required within-district allocations to Title I schools in rank order of poverty
Requirement to provide school choice transfers for students in schools failing to make AYP		Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>	Partially waived <sup>4</sup>		Requirement to provide school choice transfers for students in schools failing to make AYP

Checkmark indicates a waiver of provision granted.

Empty box indicates the state did not request a waiver.

<sup>1</sup> **Title I schools** receive federal aid under Title I Part A of the Elementary and Secondary Education Act (ESEA), which provides federal funding to benefit economically disadvantaged schoolchildren.

<sup>2</sup> Under *NCLB*, schools and districts must make **adequate yearly progress (AYP)** by meeting AMOs each year. If AYP is not met, schools and districts can be identified as in need of improvement and subject to school improvement actions.

<sup>3</sup> The reservation is not waived, but monies can be used for school improvement actions in schools that are lowest performing or have the most in-school achievement gaps.

<sup>4</sup> States are no longer required to allow students in failing schools to transfer to other schools making AYP in the district. But states must allow students currently enrolled in a choice school to remain through the highest grade at the school.

Sources: ESEA Flexibility Requests and Related Documents. The U.S. Department of Education — <http://www.ed.gov/eSEA/flexibility/requests>.

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- Rules that disqualify non-Title I low-performing schools from school improvement funds
- Rules that disqualify non-Title I high-achieving schools from financial rewards
- School poverty threshold for school improvement actions
- Within-district allocations to Title I schools in rank order of poverty
- Limitations on the transferability of Title I funds from one program to another
- School Improvement Grants awarded to Title I schools only, and
- Highly Qualified Teacher agreements and restrictions on hiring paraprofessionals.

Secretary Duncan partially waived two other provisions relating to school choice transfers and Title I funding for school improvement. First, SREB states that were granted waivers are no longer required to provide school choice transfers or supplemental tutoring for students in low-performing Title I schools. However, students who were allowed to transfer from a low-performing school into a higher quality school under *NCLB* must be allowed to remain through the highest grade at the school. Second, while SREB states get more freedom to use Title I funds to support non-Title I schools, they are still required to reserve a certain percentage of that funding for school improvement activities in schools with the lowest student performance or largest achievement gaps.

## What do states have to give up for flexibility?

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In exchange for flexibility, SREB states that were granted waivers agreed to adopt college- and career-readiness standards, develop differentiated accountability systems for schools and districts, factor student achievement scores into teacher and principal evaluations, and create a unified state accountability system.

Twelve of the SREB states that were granted waivers had already adopted, as their college- and career-readiness standards, the Common Core State Standards. The remaining state, Virginia, developed its own state-based college- and career-readiness standards, which were recognized by Secretary Duncan as meeting *NCLB* criteria.

All but six of the SREB states receiving waivers replaced the original *NCLB* 2014 goal (of 100 percent of students at proficiency on state assessments) with a new performance goal: reducing by half the percentage of non-proficient students by 2017 — and setting separate annual targets for student groups as a part of their differentiated accountability systems. Five SREB states — Oklahoma, Kentucky, Florida, South Carolina and Virginia — opted to set their

own state-specific goals that require academic performance to rise steadily over time. Louisiana is the only SREB state that maintained the original *NCLB* goal for 100 percent student proficiency by 2014.

To make accountability decisions, Arkansas, Kentucky, Georgia, Maryland, Mississippi and Virginia now rely on a so-called “index system” that uses broader measures to determine progress and identify schools for improvement. SREB states use their index systems in a variety of ways, but each allows greater flexibility than the previous “all or nothing” approaches:

- Georgia implemented a College and Career Ready Performance Index (CCRPI) that uses multiple indicators to rate schools, including percentages of students reaching proficiency, student growth percentiles and progress toward closing achievement gaps.
- Kentucky’s model determines an overall accountability score using weighted averages of student achievement data, instruction and support (such as program reviews), and teacher and principal evaluations.

- Maryland will assign an index score to K-8 schools based on overall achievement scores, student growth and schools' progress toward reducing the achievement gap. For high schools, the index score is based on overall achievement scores, progress toward reducing the achievement gap, and college- and career-readiness indicators.
- Mississippi's Quality of Distribution Index (QDI) rates schools according to overall achievement scores, overall test performance of the lowest-performing students, overall test performance of the highest-performing students, and progress toward closing achievement gaps.

Florida, Louisiana, Oklahoma, South Carolina and Tennessee developed (or refined) "A-to-F" school grading systems, which assign grades annually to schools based on measures that include student achievement, participation and graduation rates. North Carolina created perhaps the most simplified accountability system that measures, reports and monitors the status/performance (for the current year) and progress/change (growth across years) of student achievement. Delaware made the least changes to original *NCLB* policies. It simply reset the AMOs for a new performance goal to reduce by half the percentage of non-proficient students by 2017.

## What changes do waivers mean for schools and students?

Taken as a group, the waivers move away from *NCLB*'s uniform plan for ensuring all students become proficient in reading and math by 2014. Instead, the focus has shifted toward academic growth on a slower, yet more practical trajectory. The waivers, at least implicitly, concede that all students in all schools may never reach academic proficiency, but greater percentages of them can reach proficiency and all can reach higher levels of achievement.

In some cases, states will no longer track "adequate yearly progress" or use the "needs improvement" label to identify schools that fail to meet AMOs. States get to reset their AMOs toward proficiency rates that fall below the 100 percent mark, and state leaders get the freedom to use certain Title I funds to support non-Title I schools and intervention programs not covered under the original law. The waivers yield greater state power in appropriating Title I funds to benefit students and schools despite economic status.

Under *NCLB*, schools must raise student performance both overall and for each separate student group to make adequate yearly progress in the accountability framework. The waivers now allow states to differentiate the way they hold schools

accountable for raising achievement among student groups. Most SREB states that received waivers will track and publicly report the performance of each student group as defined by *NCLB*. However, the states will not use this data to make major accountability decisions. Some states will combine one or more student groups into one "super group" and schools will be held accountable for raising the overall test performance of this new "super group." Kentucky's "super group" includes all student groups as defined by *NCLB*, but Arkansas's "super group" only consists of low-income students, English-language learners and students with disabilities. Florida, Louisiana and Oklahoma will not rely on student groups as defined by *NCLB* at all; these states will hold schools accountable for raising the achievement of the lowest-performing students in the state.

Based on these changes, policy-makers can expect:

- broader measures to rate school quality and determine state interventions
- more discretionary use of Title I appropriations regardless of a school's poverty status
- student achievement data to play a larger role in teacher and principal evaluations



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- a new achievement goal that aims to reduce by half the percentage of non-proficient students by 2017 in most SREB states
- different annual targets for student groups and content assessments in most SREB states
- major accountability decisions no longer based on the separate performance of specific student groups as defined by *NCLB*, and
- emphasis on both achievement scores and academic progress to determine accountability status.

## Looking ahead

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The waivers are temporary solutions with an expiration date of 2014; states will be able to request an extension if ESEA is not reauthorized by then. Even now, some states are amending their approved plans as they continue to refine and implement new reforms. The waivers mean that states will vary on expectations, goals and accountability frameworks as they move beyond the uniformity of *NCLB*. Also, the waivers permit states to replace clear, although perhaps arbitrary, accountability rules with weighted formulas and complex indexes that can potentially

confuse school staff, parents and community stakeholders. Tracking school accountability and understanding performance ratings will not be easy. The challenge for SREB states is finding the right workable solutions that maintain the underlying spirit of *NCLB*, which encourages states to ensure that all students reach high levels of achievement.

SREB is working to develop a detailed, state-by-state report that outlines new federal and state educational policies under *NCLB* flexibility.

## Sources

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“February 6, 2012 Letter – ESEA Reauthorization.” National Governors Association — <http://www.nga.org/cms/home/federal-relations/nga-letters/education--workforce-committee-l/col2-content/main-content-list/february-6-2012-letter---esea-re.html>.

Diaz, Alicia. *Focusing on Student Performance Through Accountability*. Southern Regional Educational Board, 2005.

*No Child Left Behind Act of 2001*. The U.S. Department of Education — <http://www2.ed.gov/policy/elsec/leg/esea02/index.html>.

“Obama Administration Sets High Bar for Flexibility from No Child Left Behind in Order to Advance Equity and Support Reform.” The White House Office of the Press Secretary, September 23, 2011 — <http://www.whitehouse.gov/the-press-office/2011/09/23/obama-administration-sets-high-bar-flexibility-no-child-left-behind-orde>.

ESEA Flexibility Requests and Related Documents. The U.S. Department of Education — <http://www.ed.gov/esea/flexibility/requests>.

Usher, Alexandra. *AYP Results for 2010-11 – May 2012 Update*. Center on Education Policy, May 8, 2012 — <http://www.cep-dc.org>.

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