



Frequently Asked Questions Regarding the Secretary of Education's Waivers of Major ESEA Requirements

*****Updated February 16, 2012*****

What is the Secretary of Education's program for waiving major ESEA requirements?

On September 23, 2011, U.S. Secretary of Education Arne Duncan announced a policy under which he would waive a number of important requirements under the Elementary and Secondary Education Act (ESEA) in states that agree to meet a number of broad, new requirements.¹ These ESEA requirements have applied to states that receive grants for the education of disadvantaged students under Title I, Part A, of the ESEA (currently, this includes all states). The designated ESEA requirements that can be set aside in states that request such waivers include some of the most significant outcome accountability requirements of the ESEA, such as the requirement that states set performance standards for schools and districts aiming toward a goal of 100% student proficiency in reading and mathematics by the end of the 2013-14 school year, and take a variety of specific actions with respect to all schools and districts that fail to make adequate yearly progress (AYP) toward this goal. As explained later in this document, states must meet a number of new requirements in order to receive the waivers.

What is the timetable for waiving ESEA requirements?

States wishing to submit waiver requests were asked to indicate their intention to ED by October 12, 2011; 39 states, plus the District of Columbia and Puerto Rico, indicated that they would, at some point, submit waiver applications. If the state wanted to be included in an initial round of reviews, its request was to be submitted by November 14. Eleven states submitted waiver applications for this first round of review. On February 9, 2012, the Secretary of Education announced that the applications of 10 of these states had been approved, and on February 15 announced the approval of the application of the 11th state.² For a discussion and analysis of important accountability-related

¹ See <http://www.ed.gov/esea/flexibility>, accessed on February 16, 2012.

² See <http://www.ed.gov/esea/flexibility>, accessed on February 16, 2012. The 11 states that submitted first round applications were Colorado, Florida, Georgia, Indiana, Kentucky, Massachusetts, Minnesota, New Jersey, New Mexico, Oklahoma and Tennessee. The waivers

provisions of the 11 approved state waiver applications, see “Major Accountability Themes of Approved State Applications for NCLB Waivers” at www.cep-dc.org.

The deadline for submitting a second round of requests is February 28, 2012. As of February 6, 2012, 28 states plus the District of Columbia and Puerto Rico have indicated that they intend to submit waiver applications for this second round of reviews. The Department of Education recently announced a third waiver application submission date of September 6, 2012.

General guidance documents regarding the waiver plan, as well as state request forms, have been posted by ED.³ State requests are being reviewed by both ED staff and outside peer reviewers, with final decisions made by the Secretary of Education. Peer reviewer guidance documents provide additional details about how the waiver policy is being implemented and specific forms of evidence that states must submit to show that they meet new requirements.

While states receiving waivers in the initial round of reviews are able to implement some policy changes, such as revised AMOs, in the current (2011-12) school year, most of the waivers granted in both rounds of review will begin to take effect primarily in 2012-13. Guidance documents from ED establish a timeline for implementation of new requirements during the 2012-13 through 2014-15 school years.

What ESEA requirements can be waived?

The Secretary has outlined selected ESEA requirements that could be waived under his policy. Some of these requirements are quite significant, while others are more technical adjustments, some of which are necessary in order to accommodate new requirements that states must meet in order to qualify for the waivers. The *most significant* of the ESEA requirements that can be waived are:

- The requirement that states establish annual measureable objectives (AMOs) – required minimum percentages of pupils in each relevant group who must perform at a proficient or higher level in reading and mathematics in order for a school or school district to make AYP -- that increase over time and culminate in a goal of 100% student proficiency by the end of the 2013-14 school year (states receiving waivers are still required to set AMOs and make annual accountability determinations, but these need not be linked to a 2013-14 goal of 100% proficiency);
- Requirements to identify *schools* participating in the ESEA Title I program that fail to make AYP for 2 consecutive years or more for increasing levels of consequences – improvement, corrective action, and restructuring – and to

for 3 of these states (Florida, Georgia, and Oklahoma) are conditioned on specified future state actions.

³ See <http://www.ed.gov/esea/flexibility>, accessed on February 13, 2012.

require districts to offer public school choice and supplemental educational services (tutoring) options to students attending these schools (these provisions would be replaced by new requirements for state-determined interventions in 2 potentially more limited groups of low-performing schools);

- Requirements to identify *districts* participating in the ESEA Title I program that fail to make AYP for 2 consecutive years or more for consequences including improvement and corrective action;
- Requirements that districts failing to meet highly qualified teacher (HQT) standards develop improvement plans (major new teacher and principal quality requirements would be applied in states that receive waivers); and
- Requirements that states and districts exercising authority to transfer funds among certain ESEA program can transfer no more than 50% of the funds under each program.

Other forms of flexibility from ESEA requirements that states could receive under the waiver plan include: (a) schools identified as “priority” or “focus” schools under states’ new accountability policies (see next question) could operate schoolwide programs under Title I, even if they do not meet the eligibility criterion of 40% or higher enrollment of students from low-income families; (b) funds under the Title I School Improvement Grant program could be allocated to any school identified as a “priority” or “focus” school; (c) grants under the 21st Century Community Learning Centers program could be used to expand learning opportunities during the school day, in addition to services outside the regular school day or periods when school is not in session; (d) flexibility in the use of certain ESEA funds would be available to all rural districts, not just those making AYP; and (e) Title I funds that might be reserved for high performing Title I schools could be used in “reward” schools as defined under states’ new accountability policies (see next question).

A table briefly comparing current provisions of the ESEA and changes that could occur under the waiver plan may be found at the end of this document.

The range of ESEA requirements for which waivers could be granted includes several of the major ESEA accountability requirements for which states had earlier submitted waiver requests to the U.S. Department of Education (ED), or had publicly discussed doing so. These requests had focused primarily on the general requirement that AMOs reach a level of 100% proficiency for all student groups by the end of the 2013-14 school year; the more specific requirement that AMOs increase at least once every 3 years; and requirements for a variety of specific actions to be taken with respect to schools identified for improvement, corrective action, or restructuring after failing to make AYP for multiple years.

What new requirements do states have to meet in order to obtain waivers?

In return for waiving the ESEA requirements described above, states will be required to meet a number of major new requirements that are not currently contained in the ESEA or any other federal statutes. States seeking waivers must address all four of the following, to the satisfaction of the Secretary:

- States must establish “***college-and career-ready***” ***expectations*** for all students. This includes the adoption of content standards in at least reading and mathematics, aligned “high quality” assessments, and achievement standards at least for grades 3-8 and once in high school. These are the same subject areas and grades for which standards and assessments are required under the ESEA statute, with the exception of science standards and tests at 3 grade levels,⁴ but the rigor and quality of the standards and assessments are intended to be higher than those required under the ESEA. States would also be required to implement English language proficiency standards and assessments for English language learners, and alternate standards and assessments for students with the most significant cognitive disabilities, that are coordinated with the college- and career-ready standards and assessments.

The college- and career-ready standards and assessments adopted by states might be the Common Core State Standards currently being supported by a majority of the states, standards and assessments otherwise adopted by a significant number of states, or other standards and assessments developed by states and approved by a state network of institutions of higher education – i.e., states would not be required to adopt the Common Core State Standards in order to qualify for a waiver. Accountability determinations would continue to be made for all public schools and districts, but would be based on “ambitious but achievable” AMOs linked to state-determined goals that need not culminate in 100% student proficiency at any point in time.⁵ In sharp contrast to current law, AMOs could be different for different districts, schools, or student subgroups (students from low-income families, English language learners, students with disabilities, or students in major racial or ethnic groups), although AMOs for those at lower achievement levels would be required to show higher rates of annual progress.

⁴ Although science standards and tests are not mentioned among the waiver requirements, the science standard and assessment requirements of current law would presumably still apply.

⁵ Two options for states that are cited in ED documents include: (1) AMOs culminating in 100% proficiency by the end of the 2019-20 school year, using the proficiency rate for all students in 2010-11 as a starting point; or (2) AMOs that culminate in a reduction by one-half of the percentage of students not proficient, overall and for each student subgroup, within 6 years. However, these options are mentioned only as examples, and states may propose other types of AMO timelines.

- States must develop and implement ***differentiated accountability, recognition, and support policies*** and systems. To replace the ESEA statute's system under which states must identify each Title I school or district that fails to make AYP for 2 consecutive years or more for increasing levels of consequences (improvement, corrective action and restructuring for schools, improvement and corrective action for districts), including several specific actions that must generally be taken in all schools identified, states receiving waivers are required to identify two groups of low-performing schools and develop and implement policies for appropriate interventions in such schools.

Substantial, comprehensive interventions will be required for “*priority*” schools, constituting at least 5% of the state’s Title I schools with the lowest levels of performance, while more targeted interventions will be required for “*focus*” schools, at least 10% of all Title I schools in the state with the lowest levels of performance or graduation rates for specific subgroups of students or the highest achievement or graduation rate gaps. High schools participating in Title I that have graduation rates below 60% must be included among the state’s priority or focus schools. Schools that states would currently identify for these two categories must be identified in the state’s waiver application. Specific actions, such as public school choice and supplemental educational services for students in schools identified for current accountability consequences, become optional, and states need not establish consequences for low-performing districts. Districts will no longer be required to reserve an amount equal to 20% of their Title I grant for school choice and supplemental educational services, although they could direct such funds to their priority and focus schools. High-performing Title I schools will be identified for recognition and possibly financial awards. New state accountability systems must build capacity at the state and district levels for technical support of interventions.

- States must develop and implement ***teacher and principal evaluation and support systems*** that: use multiple measures, including data on student growth as a significant factor in determining performance; have at least 3 performance levels; and will be considered in making personnel decisions.
- Finally, states must evaluate their administrative and reporting requirements, and eliminate those that are duplicative or burdensome.

Are NCLB accountability waivers available to states that are not currently prepared to submit comprehensive NCLB waiver applications?

In addition to the comprehensive NCLB accountability waiver option described above, the Secretary of Education has offered a more limited option for temporary relief from the rising AMOs required under the NCLB statute. States may request a waiver to use the same AMOs for 2011-12 school year AYP determinations as they used for the previous year (2010-11).⁶ Without a waiver, the AMOs for 2011-12 would be higher than those for 2010-11 in virtually all states. States seeking this AMO waiver must meet 3 criteria that are more limited than those described above for the comprehensive NCLB accountability waivers. States must adopt college- and career-ready standards; link student achievement data to relevant teachers and principals, and provide that information to educators; and must identify persistent gaps in achievement and graduation rates between the “all students” group and each student subgroup specified in the NCLB.

What is the source of the Secretary's authority to waive ESEA requirements?

The authorization of special forms of flexibility for grantees has been a focus of federal K-12 education legislation over the past two decades. These flexibility authorities apply primarily to programs under the ESEA, as amended most recently by the No Child Left Behind Act of 2001 (NCLB). These special flexibility authorities include Secretarial case-by-case waivers, Ed-Flex, ESEA Title I-A schoolwide programs, flexibility in the use of certain ESEA grants for small rural school districts, the Innovative Programs block grant, authority to transfer a share of funds among certain ESEA programs or into ESEA Title I, plus a State and Local Flexibility Demonstration Program.

While there are multiple special flexibility authorities applicable to some or all ESEA programs, the one most relevant to current considerations is the Secretarial case-by-case waiver authority in ESEA Section 9401. This authority was first adopted under the Improving America’s Schools Act of 1994, and extended in essentially the same form under the NCLB in 2001. Waivers may be granted to states, local school districts, Indian tribes, or schools through their district on a case-by-case basis, directly by the U.S. Secretary of Education. Under Section 9401, the Secretary may waive “any statutory or regulatory requirement of” the ESEA, with the exception of specified types of requirements discussed below. The waivers must be specifically requested, and waiver requests must include “specific, measurable educational goals ... and the methods to be used to measure annually ... progress for meeting such goals and outcomes” for pupils eligible to be served by the ESEA programs for which waivers are requested.

⁶ See <http://www.ed.gov/esea/flexibility>, accessed on February 16, 2012.

Is the Secretary authorized to establish new requirements that states must meet in order to obtain waivers?

With respect to the Secretary's authority to set requirements for waiver applicants, ESEA Section 9401 provides that waiver applicants must:

- describe "which Federal statutory or regulatory requirements are to be waived and how the waiving of those requirements will—(i) increase the quality of instruction for students; and (ii) improve the academic achievement of students;"

- describe "specific, measurable educational goals, in accordance with section 1111(b) [the ESEA Title I requirements for standards, assessments, and AYP determinations], for the State educational agency and for each local educational agency, Indian tribe, or school that would be affected by the waiver and the methods to be used to measure annually such progress for meeting such goals and outcomes;" and

- explain "how the waiver will assist the State educational agency and each affected local educational agency, Indian tribe, or school in reaching those goals."

Thus, the statutory waiver authority includes relatively unspecific language regarding outcome goals that the requested waivers are expected to promote. States voluntarily request the waivers, and states not wanting to meet requirements associated with new waivers need not apply for them. Past examples of the use of this authority have included a variety of requirements that applicants were expected to meet in order to qualify for the waivers, although these requirements were generally a combination of relatively strict interpretations and applications of requirements already in the ESEA statute plus new requirements, many of them relatively technical in nature, that were closely related to the form of flexibility being requested.

In contrast, many of the new requirements for states seeking ESEA accountability waivers (described above) are unprecedentedly broad and go well beyond requirements currently in the ESEA or other federal statutes. The authority of the Secretary to apply requirements, especially any new requirements that are not currently in the ESEA, is not unlimited. The waiver authority relates much more directly to waiving statutory requirements than to creating new requirements.

Nevertheless, it is very difficult to define a boundary between creating new requirements vs. interpreting and implementing the requirement that waiver requests include "specific,

measurable educational goals ... and the methods to be used to measure annually such progress for meeting such goals and outcomes” for pupils eligible to be served by the relevant programs. It is also difficult to determine that the Secretary has exceeded his authority when new requirements are couched as “voluntary,” as part of a package deal to obtain new forms of flexibility. Also, particularly in the area of consequences for low-performing Title I schools, the new requirements under the current plan call for states to establish modified accountability policies under which they have more flexibility overall than under current law. This issue has been subject to debate, and may possibly lead to legal action as this process evolves, especially if some state officials feel that the Secretary is asking “too much” of states in return for increased flexibility or that the required state policy changes are insufficiently related to the ESEA statute.

Who can request the waivers?

While Section 9401 authorizes states, local school districts, Indian tribes or schools (via their local school districts) to request waivers from the Secretary, this round of ESEA waivers is available to states only. The requested forms of flexibility will, where granted, be available to all local school districts and Title I schools in the state.

What are the major limitations on the Secretary's ability to waive ESEA requirements?

The ESEA specifies a number of program requirements that *cannot* be waived under Section 9401. These include requirements related to:

- fiscal (as opposed to outcome) accountability (e.g., requirements for local school districts or states to maintain their level of spending for free public education; to use federal aid only to supplement, and not supplant, state and local funds for specified purposes; or to provide state and local funding that is comparable in Title I schools compared to other schools in a local school district),
- equitable participation by private school pupils and teachers,
- parental involvement in program activities and services,
- allocation of funds to states or local school districts,
- certain ESEA Title I school selection requirements,
- applicable civil rights requirements,

- prohibitions against consideration of ESEA funds in state school finance programs,
- prohibitions against use of funds for religious worship or instruction,
- prohibitions against use of funds for sex education (under ESEA Title IX, Section 9526), and
- the eligibility requirements for charter schools under the Public Charter Schools program (ESEA Title V-B-1).

Note that the major ESEA Title I requirements regarding assessments, AYP, and other aspects of outcome accountability are not listed above, and therefore those requirements could be waived by the Secretary under the Section 9401 authority. More specifically, the requirements that the Secretary is now waiving in selected states are not in any of these prohibited categories. The ESEA Section 9401 authority was first adopted in 1994, before the NCLB era of major outcome accountability requirements, and this provision received relatively little attention during NCLB debates in 2001. In effect, the authority reflects a pre-NCLB view of what ESEA requirements are so important that they should not be subject to waiver.

A final limitation on the Section 9401 authority is that waivers may not exceed four years, although they could be extended if the Secretary of Education at the time determines that the waiver has contributed to improved student achievement and is in the public interest. Perhaps in recognition of this, *the current waiver plan would provide flexibility only through the end of the 2013-14 school year*, although state plans for implementation of new policies must include actions to be taken in the following year (2014-15). In contrast, waivers may be terminated at any time if the Secretary determines that pupil performance or other outcomes are inadequate to justify continuation of the waivers, or that the waiver is no longer necessary. The Secretary has also stated that waivers “may” be terminated if superseded by ESEA reauthorization legislation.

What types of ESEA requirements have been waived by the Secretary in the past?

The Secretary of Education is required to publish a notice of the decision to grant a waiver in the Federal Register. Typically, ED has published compilations of waivers granted over one or multiple years. Data are currently available on waivers granted between the enactment of the NCLB and the end of calendar year 2009. Over this time period, a total of 634 waivers were granted under Section 9401. Of these,

- 228 (36%) dealt with administrative matters such as the extension of time during which funds could be used or limits on the share of grants that could be used for administrative costs (particularly under Indian education programs),

- 196 (31%) dealt specifically with use of Title I funds received under the American Recovery and Reinvestment Act (ARRA), the economic stimulus legislation enacted in 2009, primarily regarding the share of those funds to be used for school choice and supplemental educational services and fund carryover limits,
- 176 waivers (28%) dealt with ESEA Title I outcome accountability requirements.
- 28 (4%) addressed the impact of natural disasters, and
- the remaining 6 waivers(1%) dealt with ESEA Title I provisions in areas other than accountability.

The third group of waivers, which is most relevant to the current situation, dealt with matters ranging from growth models of AYP, differentiated state accountability policies (treating schools needing improvement differently depending on the types and sizes of student groups, and the degree to which, they failed to make AYP), and allowing local school districts in need of improvement to be supplemental educational services providers, to allowing local school districts to modify the order of provision of supplemental educational services and public school choice for schools in need of improvement.

Over time, the number of Section 9401 waivers granted increased from an average of 35 per year from 2002-2008, to 351 for 2009, a tenfold increase. However, over one-half (56%) of the waivers granted in 2009 dealt specifically with one-time issues related to funding provided under the ARRA.

Are there mechanisms other than waivers through which the Secretary might increase flexibility for meeting ESEA requirements?

At least limited degrees of additional flexibility in meeting ESEA accountability requirements have been, and may continue to be, provided by ED through mechanisms other than requests for waivers under Section 9401. The primary alternative is likely to be state amendments to their ESEA accountability plans.⁷ In recent months, some states have been allowed to amend their accountability plans to, for example, reset their AMOs – required minimum percentages of pupils in each relevant group who must perform at a proficient or higher level in reading and mathematics in order for a school or school district to make AYP -- for some school years. Similar, and possibly expanded, amendments are likely to be proposed and considered in the near future. Such changes, if approved by ED, do not require the submission of waiver requests by states, and do not require states to meet any additional requirements that might be

⁷ For the current ESEA state accountability plans, see <http://www2.ed.gov/admins/lead/account/stateplans03/index.html>, accessed on February 14, 2012.

associated with ESEA accountability waivers. For more information about state accountability plans, see “Frequently Asked Questions about State Accountability Plans and Their Relationship to Waivers,” available at cep-dc.org.

What effect, if any, is the availability of waivers likely to have on efforts to reauthorize the ESEA in Congress?

While this question is so relevant as to be worth raising, any attempt to answer it is speculative at this point. Efforts to develop and consider ESEA reauthorization legislation have taken place in both the Senate and House of Representatives during the current (2011-12) Congress, and are likely to continue. However, few analysts would suggest that these efforts are likely to result in the enactment of comprehensive reauthorization legislation during the remainder of 2012. It is reasonable to argue both that expanded use of waivers by the Secretary will likely *reduce* incentives to move reauthorization legislation, since the waivers address many of the most significant concerns about the ESEA, or that the expanded use of waivers will *increase* the motivation of Congress to revise the ESEA through reauthorization legislation, in order to influence policy changes – particularly state policy changes that ED is requiring in return for the waivers -- to a maximum degree.

One thing that is reasonably clear is that as the Secretary’s waiver plan is implemented, without effective challenges in courts or elsewhere, and a significant number of states participate, the incentive for the Obama Administration to push for or substantially compromise on ESEA reauthorization legislation will be reduced, since many – though certainly not all – of the policy changes they proposed for reauthorization are accomplished, at least for the next couple of years, through the waiver plan. Of course, policy changes effected through waivers could be quickly reversed or replaced by another round of policy changes via waivers or new regulations by whoever is the Secretary of Education after the 2012 Presidential election.

Potential Impact of Waivers on Key Aspects of the ESEA

Provision	Current Law	New Waiver Plan
Content and student achievement standards	States must adopt and implement content and student achievement standards in at least reading, mathematics and science	Same, except that the standards in reading and mathematics must reflect college- and career-ready expectations; these standards must be common to a significant number of states or approved by state institutions of higher education
Assessments	States must conduct	Reading and mathematics

Provision	Current Law	New Waiver Plan
	assessments in reading and mathematics in each of grades 3-8 and at least once in high school, and conduct science assessments at least once in each of grades 3-5, 6-9, and 10-12; there are additional assessment requirements for English language learner students and students with disabilities	assessments must be conducted in the same grades as currently, and must be “high quality” assessments that reflect college-and career-ready expectations; the science assessment requirement is unchanged; English language proficiency assessments and alternate assessments for students with the most significant cognitive disabilities must be linked to the new state standards
Annual Measureable Objectives (AMOs)	States must set AMOs – minimum percentages of students achieving at a proficient or higher level – in reading and mathematics for each grade level at which assessments are conducted	Same, except that AMOs must be linked to college- and career-ready standards and assessments
Applicability of AMOs in different contexts	AMOs may vary by subject and grade level, but otherwise must be the same for all districts, schools, and student subgroups statewide	AMOs may vary not only by subject and grade level but also by school or student subgroup; such varying AMOs must require greater gains by schools or subgroups that have lower achievement levels
AMO Timeline	AMOs must increase in equal increments at least once every 3 years and culminate in 100% student proficiency by the end of the 2013-14 school year	The 2013-14 proficiency goal is waived, and states have a variety of options for setting “ambitious but achievable” AMOs; as a transition, 2011-12 AMOs may be the same as those for 2010-11
Adequate Yearly Progress (AYP) determinations	States must make annual AYP determinations for each district and public school, applying relevant AMOs to the reading and mathematics proficiency level of all students as well as students in designated subgroups (students from low-income families, English language learners, students with disabilities, and students in major racial and ethnic groups) plus an additional	States receiving waivers are no longer required to make AYP determinations if they propose using different procedures for making accountability determinations for schools. States will continue to be required to set AMOs and determine whether all students, as well as students in each subgroup specified in the ESEA, are meeting these AMOs, and to report the results of these determinations. Public

Provision	Current Law	New Waiver Plan
	academic indicator (for high schools, the graduation rate); AYP results must be reported to the public	reports must also include college-going and college credit accumulation rates by student subgroup for each district and high school
Consequences for schools	All Title I schools (and other public schools, at state discretion) that fail to make AYP for 2 consecutive years or more must be identified for increasing levels of consequences -- improvement, corrective action, and ultimately restructuring; a variety of actions must be taken with respect to schools at each stage of these processes, including the provision of public school choice and supplemental educational (tutorial) services ⁸	States must develop and implement differentiated accountability systems and take action with respect to 2 groups of low-performing Title I schools: (1) "priority" schools, at least 5% of all Title I schools in the state with the lowest performance, where comprehensive intervention is required, and (2) "focus" schools, at least 10% of all Title I schools in the state with the greatest gaps in achievement or graduation rates or the lowest achievement or graduation rates among specific student subgroups, where more targeted interventions are required; public school choice and supplemental educational services are optional parts of these interventions, but are not required
Consequences for districts	Districts that fail to make AYP for 2 consecutive years or more are identified for increasing levels of consequences -- improvement and corrective action	Requirements for district level consequences for low performance are waived and are not replaced with new requirements
Rewards for high performing Title I schools	Title I schools that exceed AYP requirements for 2 consecutive years or more or significantly close achievement gaps are to be recognized and may receive financial awards	Same except that the reference to exceeding AYP and closing achievement gaps is changed to Title I schools with the highest levels of performance or greatest rates of improvement in the state
Teacher quality	States and districts must	The requirement for HQT

⁸ Previous to the NCLB waiver activity discussed in this report, under a differentiated accountability pilot waiver program, a number of states have been allowed to vary the interventions used in schools identified for improvement depending on the extent to which a school has failed to make AYP and the specific student subgroups that have fallen short.

Provision	Current Law	New Waiver Plan
	comply with a variety of Highly Qualified Teacher (HQT) requirements; districts that are not in compliance must develop improvement plans	improvement plans is waived, but states must develop and implement teacher and principal evaluation and support systems that: use multiple measures, including data on student growth; have at least 3 performance levels; and will be considered in making personnel decisions. Aggregate information on staff performance levels is to be reported to the public.
Federal fund transferability	States and districts may transfer up to 50% of grants under certain ESEA programs among those programs or into Title I	The 50% limit is waived (i.e., 100% of the funds under these programs could be transferred)
Flexibility for rural districts	Rural districts that are making AYP may combine their grants under selected ESEA programs	All rural districts may combine these grants
Eligibility to operate schoolwide programs under ESEA Title I	Schools may use Title I grants on a schoolwide basis if at least 40% of their students are from low-income families	The 40% eligibility criterion is waived for “priority” and “focus” schools (see above)
Eligibility for School Improvement Funds	In general, these funds are granted to schools identified for improvement, corrective action or restructuring, plus certain low-performing high schools that are eligible for Title I but do not participate	“Priority” and “focus” schools would be eligible for these grants
Use of funds under the 21 st Century Community Learning Center program	These grants may be used to expand learning time outside regular school hours or during periods when school is not in session	These grants could also be used to expand learning time during regular school hours

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