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Some States Skeptical of NCLB Waivers

By [Sean Cavanagh](#)



Just months after the Obama administration [gave](#) states the opportunity to escape from some of the most demanding provisions in the No Child Left Behind Act, a handful of them have either rejected that offer or voiced serious reservations about it, saying the rules for securing a waiver are equally or nearly as impractical as the ones set in current law.

The skeptics include the nation's most populous state, California, as well as rural ones such as Montana—where the schools chief has said the state's rejection of the offer is final—and Nebraska and Wyoming, which as of earlier this month had not decided whether to apply but have deep concerns.

"The biggest broken pieces of No Child Left Behind are not fixed" through the waivers, said Denise Juneau, Montana's [state superintendent of public instruction](#). "Taking on additional requirements to get a waiver that isn't really a waiver doesn't seem smart."

Such criticism underscores the debate that still surrounds the NCLB law, which President George W. Bush signed into law 10 years ago this month. The law, the latest version of the Elementary and Secondary Education Act, sought to raise achievement by holding schools accountable for their students' academic performance.

The current administration's offer, announced in September, would allow states to escape from the academic targets they must meet under the law—including a provision that all students reach proficiency in reading and math by the end of the 2013-14 school year—and it would free them of the sanctions for not meeting those targets. In exchange, states would have to set new academic goals that are "ambitious but achievable," create evaluation systems that judge teachers and administrators on student test scores and other factors, and establish plans for improving low-performing schools, among other provisions.

Federal officials have set a series of deadlines for states to apply for waivers, with the next one coming in February, though states can apply later if they want. Thirty-nine states, plus the District of Columbia, initially indicated that they would pursue waivers, while 11 states did not.

The number of holdouts, however, is in flux. Officials in at least one of the initial 11 states, Louisiana, say they intend to apply, while others say their states may seek waivers later.

Pennsylvania Secretary of Education [Ronald J. Tomalis](#), who is undecided on whether to apply, said that U.S. Secretary of Education Arne Duncan had "a lot of arrows in his quiver" to help states cope with the law's requirements for academic gains by schools, but that those options were ultimately not evident in the waiver process.

"There are portions of [the waiver program] that are consistent with what the states are doing and will move the ball academically," Mr. Tomalis said in a recent interview, citing the emphasis on teacher evaluation as one example. But overall, he said: "We don't call it a 'waiver' program so much as a 'replacement' program."

Secretary's Authority

In making the waiver offer on Sept. 23, the Obama administration cited authority granted the U.S. secretary of education under the NCLB law. To receive waivers, states, which have faced increasing pressure to meet the law's academic targets, have to agree to adopt "college- and career-ready" academic standards, such as the [Common Core State Standards](#) approved by 46 states and the District of Columbia. In addition to putting in place new systems for evaluating teachers and principals, states have to take aggressive steps to

improve academic performance in the lowest-performing schools. ("**Obama Outlines NCLB Flexibility**," Sept. 28, 2011.)

States securing waivers still will be required to fulfill the NCLB law's mandate that they test students annually in grades 3-8, and once in high school, in reading and math. But they would be freed of having to meet the deadline for having all students reach proficiency two years from now; districts and schools also would be freed from the sanctions for not making adequate yearly progress, or AYP, under the law, such as restructuring struggling schools or implementing tutoring or public school choice.

In exchange, states will be expected to set new academic targets. They could establish goals that recognize the growth in student test scores over time—a step federal officials say has been made possible by advances in states' testing and accountability systems. They will also be allowed to tailor interventions to meet the needs of individual schools and subgroups of students. States that are not granted waivers will be expected to comply with existing law.

The waiver plan has drawn a critical response from California state schools chief Tom Torlakson, whose office estimates that complying with the waiver requirements would cost his state at least \$2 billion over time. Some of the costs would come in speeding up the state's implementation of the common-core standards and developing strategies to improve struggling schools, including teacher professional development.

Noting that his state has faced a string of budget crises, resulting in deep cuts to programs and services in schools, Mr. Torlakson likened taking on new federal requirements to owning a house in which "the kitchen is on fire, and someone tells us to go clean up the living room."

"We object to switching out one set of onerous standards, known as No Child Left Behind, for another set of burdensome standards," he said in an interview.

Yet the California state superintendent also said some aspects of the waiver plan are deeply appealing, such as the promise that schools would receive more flexibility on how they can use Title I money. Mr. Torlakson said he would recommend that California officials present federal officials with a proposal for a "customized or modified" waiver.

The Association of California School Administrators wants the state board of education to signal the state's intent to apply for a waiver, even if California officials later decide not to do so, said Sherry Skelly Griffith, a legislative advocate for the organization. There is strong interest among district superintendents and other California administrators in pursuing some sort of waiver, partly because they see the current law's requirements for using Title I money in low-performing schools, such as on private tutoring, as counterproductive.

"They're just done with NCLB," Ms. Griffith said of California administrators. "They feel like they're throwing money down a black hole."

In a letter to Secretary Duncan last month, Montana officials said that adopting the waiver plan would cost the state millions of dollars as it attempted to meet "many additional unfunded requirements." The letter was signed by several state education organizations, including a statewide teachers' union and groups representing school boards, school administrators, and rural schools.

Ms. Juneau, in an interview, noted that the U.S. Department of Education allowed Montana last year to reset its proficiency targets for schools after state officials vowed to refuse to increase those targets, as required by the NCLB law. She said she had hoped Mr. Duncan would take a similar step through the waiver process and freeze the state's academic mandates.

Montana officials are also concerned about the waiver requirement to establish a new teacher- and principal-evaluation system. The state is crafting standards on evaluation that will leave significant powers in the hands of local school districts, Ms. Juneau noted. She questioned whether the waiver guidelines would allow that degree of local control, and whether the guidelines would hurt recruitment and retention of teachers in the state's remote schools.

"We have small schools," Ms. Juneau said, "and they have very different challenges than big districts."

Federal officials say that it was important that they maintain current academic targets, while also offering states flexibility, if they could craft alternate plans.

"It would not be fair to students to simply press 'pause' until Congress reauthorizes the law," said Scott Sargrad, a senior policy adviser at the U.S. Department of Education, in a statement, referring to the targets. The number of states applying for waivers, he added, reflects the broad desire to "use federal funds to better meet the needs of students within their state, and implement a strong accountability system" that helps low-performing schools and struggling students, rather than relying on "one-size-fits-all interventions."

Consistent Agenda Seen

Jack Jennings, a former longtime top Democratic congressional aide who is now the president of the [Center on Education Policy](#), a research group in Washington, predicted that many of the waiver holdouts would come to accept the administration's offer. But he also predicted that federal officials would feel pressure to compromise with some states, particularly those facing major financial woes, such as California.

Mr. Jennings said that while states' criticism of the waiver requirements is understandable, Mr. Duncan deserves credit for promoting the same kinds of policy changes—in educator evaluation, school improvement, and other areas—through the waiver process, the administration's Race to the Top grant competition, and other efforts.

"He's being very consistent in his policy themes," he said of the secretary. "He's not twisting from one reform, to another, to another."

One state holdout, Nebraska, is in the process of putting in place its own new accountability system, which would make it hard to meet the mandates of the federal waiver plan, said Betty VanDeventer, a spokeswoman for the state department of education, in a recent e-mail. State officials also foresee additional obstacles, in that they did not adopt the common-core standards and do not have a statewide evaluation system for teachers and administrators.

Nebraska has decided not to apply for a waiver, though it could in the future, Ms. VanDeventer said.

Wyoming has not applied for a waiver and has concerns about doing so, [Superintendent of Public Instruction Cindy Hill](#) said. Ms. Hill said in a recent interview that a smaller portion of her state's schools had failed to make adequate yearly progress than in some other states. "We don't want to jump and make hasty decisions," she said, if there are "strings attached."

Holdout states cite political, as well as policy, concerns. Several pointed to the possibility that an eventual reauthorization of the ESEA might establish new requirements that render changes through the waiver process irrelevant.

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If that were to happen, said Mr. Tomalis, the Pennsylvania schools chief, states that pursued waivers could face “three accountability plans in succession”—the original law, the state-adopted waiver plan, and some new act approved by Congress.

Education department officials, however, note that the states have been awaiting reauthorization of the law for years, and that they have been asking for relief. “We hope that the work that states are doing now through their flexibility requests helps inform reauthorization,” said Margaret Young, a policy adviser with the education department, in a statement.

Mr. Jennings said the administration’s waiver plan could be the best deal states get anytime soon—particularly if the GOP, which now controls the House of Representatives, takes the U.S. Senate as well, and President Barack Obama, a Democrat, is re-elected.

If those things were to happen, partisan divisions over the NCLB law could harden, leaving “a stalemate for several years,” said Mr. Jennings. States may be wise to “take what they can get now,” he said.