Waivers and the American Recovery and Reinvestment Act

Background

Waivers provide states and school districts with flexibility in meeting the requirements of federal laws and regulations that they believe would limit their ability to increase student achievement. The federal government introduced waivers for states and school districts in the Improving America's Schools Act of 1994, which reauthorized the Elementary and Secondary Education Act (ESEA). During the 1990s, the U.S. Department of Education (ED) regularly encouraged states and school districts to tap into the flexibility available to them to increase student achievement and parent involvement (Cowan & Edwards, 2007). Following are two examples of the types of waivers issued during that period (National Partnership for Reinventing Government (n.d.):

- "The Fort Worth, Texas, School District received a waiver allowing it to target an extra portion of its Title I dollars to four high-poverty inner-city elementary schools. The schools were chosen for a complete overhaul due to low achievement [on] the Texas Assessment of Academic Skills and other factors. Each school [used] Title I funds to improve instruction for all its students and [emphasized] reorganizing staff, lengthening the school year, focusing on teaching reading and math, providing extensive teacher training, and strengthening links to the community."
- "As part of [Oregon's] comprehensive school improvement efforts, the [Oregon] Department of Education received a waiver to form innovative consortia, including both community colleges and school districts, for the use of Perkins funds. The consortia [received] Perkins funds to provide high quality vocational education programs to both high school and post-secondary students. Without the waiver, this type of collaboration would not have been possible."

In 2002, the ESEA (reauthorized as the No Child Left Behind [NCLB] Act) extended broad authority to the Secretary of Education to grant waivers to a limited number of states and districts. Since then, however, ED scaled back its position on waivers dramatically and states and districts were discouraged from applying for waivers.

In addition to the federal law that allows the Secretary of Education to provide waivers to states and districts, state education agencies (SEAs) also have some ability to provide waivers to school districts. Most notably, the Education Flexibility Partnership Act (also known as Ed-Flex) has streamlined the waiver process by empowering states to issue waivers (see U.S. Department of Education, 2006). Ed-Flex began as the Education Flexibility Demonstration Program in 1994, was amended in 1996, and expired in 2002; the Education Flexibility Partnership Act was enacted in 1999, expired in 2005, and was resumed in 2006 (U.S. Department of Education, 2007). Currently, 10 states are participating: Colorado, Delaware, Kansas, Maryland, Massachusetts, North Carolina, Oregon, Pennsylvania, Texas, and Vermont; however, no new states were authorized to apply.

The Education Department's Current Position on Waivers

According to recent guidance documents published for the American Recovery and Reinvestment Act (ARRA) on funds for Title I, the Individuals with Disabilities Education Improvement Act (IDEA), and the State Fiscal Stabilization Fund program, ED's position on waivers seems to be reversing once again because the guidance specifies clear opportunities for waivers. Although ED is committed to providing more detailed guidance on waivers to states and districts, the only specific guidance released to date applies to maintenance-of-effort requirements. More specific guidance is anticipated shortly, but no release dates have been given.

Visit the U.S. Department of Education's Flexibility and Waivers webpage for detailed information.

Table 1 (on page 3) indicates the current specified waivers in the ARRA guidance documents.

Title I ARRA Guidance Requirements That Cannot Be Waived

In its Title I guidance for ARRA, the Office of Elementary and Secondary Education (2009) indicates the following Title I requirements that cannot be waived:

- "Allocation and distribution of funds to [SEAs], LEAs [local education agencies], or other recipients of ESEA funds
- Comparability of services
- Use of federal funds to supplement, not supplant non-federal funds
- Equitable participation of private school students and teachers
- Parent participation and involvement
- Applicable civil rights requirements
- Requirements for a charter school under subpart 1 of Part B of Title V
- The prohibition regarding State aid in section 9522; use of funds for religious worship or instruction in section 9505; and activities in section 9526
- Selection of school attendance areas or schools under section 1113(a) and (b), except the Secretary may grant a waiver to allow a school attendance area or school to participate in Title I if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the LEA that meets the requirements of section 1113(a) or (b).
- Note that, although section 9401 of ESEA does not give ED the authority to waive maintenance of effort, ED may waive the Title I, Part A maintenance of effort requirements for SEAs and LEAs, respectively, under sections 1125A(e)(3) and 9521(c) of ESEA." (p. 40)

Specified Waivers in the ARRA Guidance

Table 1. Specified Waivers in the ARRA Guidance

Item	Is a Waiver Available? (Source)	Specifics	Who Applies for Waiver?	Who Issues Waiver?
Increase in percentage of Title I funds available for state administration.	No	Page 24 of the Title I ARRA guidance indicates that ED may not waive the cap[1] on state administrative funds.	N/A	N/A
Maintenance of effort: Generally, LEAs must maintain 90% of the expenditures of state and local funds from the previous school year.	Yes (Several)	ED released specific maintenance-of-effort guidance on May 1, 2009. Information also appears in the State Fiscal Stabilization Fund guidance, Title I ARRA guidance, and IDEA ARRA guidance.	SEA	ED
15% carryover limitation of Title I funds: State may issue funds to an LEA only once in a three-year period. Public notice is required, and Michigan offers one example.	Yes (Title I)	Page 31 of the Title I ARRA guidance states that the Secretary of Education will consider waiving this provision. Section F (pp. 39–41) provides specific details on the process of applying for waivers.	SEA, LEA	ED
Requirement for schools in improvement to spend 10% of Title I funds on professional development.	Yes (Title I)	Section F of the Title I ARRA guidance (pp. 39–41) provides specific details on the process of applying for waivers.	SEA, LEA	ED
Requirement for schools in improvement to spend 20% of the Title I, Part A, Subpart 2 allocation on transportation for school choice and supplemental educational services (SES).	Yes (Title I)	Section F of the Title I ARRA guidance (pp. 39–41) provides specific details on the process of applying for waivers.	SEA, LEA	ED
Per-pupil calculations for SES: Title I requires districts to set aside a certain amount per pupil for SES on the basis of the prior year's funding.	Yes (Title I)	Section F of the Title I ARRA guidance (pp. 39–41) provides specific details on the process of applying for waivers.	SEA, LEA	ED
Statutory or regulatory requirements for charter school LEAs.	Yes (Title I)	Section F of the Title I ARRA guidance (pp. 39–41) provides specific details on the process of applying for waivers.	SEA, LEA	ED
Supplement not supplant.	Yes (IDEA)	Section C of the IDEA ARRA guidance (p. 11) provides details.	SEA	ED

[1] On June 16, 2009, the Department provided OMB notice of a proposal to adjust this cap.

References

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