

# ESSA'BOUT TIME !



**Top Compliance Changes and Challenges Under Title I of The Every Student Succeeds Act**

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[www.bruman.com](http://www.bruman.com)  
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## Every Student Succeeds Act (ESSA)

Signed by President Obama on December 10<sup>th</sup>, 2015



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## Basic Structure

- **It's a State Regulated No Child Left Behind**
  - States choose standards and assessments, work towards goals
  - Student achievement is reported out by subgroup
  - States hold schools and districts accountable for subgroup performance
  - Funding flows from ED to States to districts to schools
  - Maintains major formula grant funding streams (and many competitive programs too)

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## Key Differences:

- (NEW) States now in the driver's seat
  - Much more authority to make decisions, choose standards and assessments, goals, and means of accountability
  - States also responsible for enforcing many requirements
  - (though subject to ED regulation)
- (NEW) The "big acronyms" have been eliminated
  - No more AYP, HQT, or SES
- (NEW) New limitations on Secretarial authority
  - Especially around State plans and waivers (very specific and repeated throughout the law)
- (NEW) Consolidates/eliminates a number of smaller grant programs

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## Definition Changes (Title VIII)

- (NEW) Eliminates definitions related to HQTs
- (NEW) "core academic subjects" → "well-rounded education"
 

<ul style="list-style-type: none"> <li>▪ English, reading or language arts, writing</li> <li>▪ <b>science, technology, engineering, mathematics, computer science,</b></li> <li>▪ foreign languages,</li> <li>▪ civics and government,</li> <li>▪ economics,</li> </ul>	<ul style="list-style-type: none"> <li>▪ arts, music</li> <li>▪ history, geography,</li> <li>▪ <b>career and technical education,</b></li> <li>▪ health, physical education, and</li> <li>▪ others as designated by State/LEA</li> </ul>
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## Teacher and Paraprofessional Qualifications Sec. 1111(g)(2)(j)

- (NEW) State Assurances
  - The SEA will ensure that all teachers and paraprofessionals working in a program supported with funds under this part meet applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification;
  - The State has professional standards for paraprofessionals working in a program supported with funds under this part, including qualifications that were in place on the day before the date of enactment of the Every Student Succeeds Act; and
    - Does this mean NCLB standards apply to paraprofessionals? Maybe.

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## Timeline for Implementation

- ESEA waivers terminate August 1, 2016
- Effective date for competitive grants (at federal level): October 1, 2016
- Effective for non-competitive formula grants (at federal level): July 1, 2016

**BUT:**

*Omnibus appropriations bill passed December 18<sup>th</sup> says:*

*"SEC. 312. Notwithstanding section 5(b) of the ESSA, funds provided in this Act for **non-competitive formula grant programs authorized by the ESEA for use during academic year 2016–2017 shall be administered in accordance with the ESEA** as in effect on the day before the date of enactment of the Every Student Succeeds Act."*

- So....NCLB in effect for another year!

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## Timeline for Implementation (cont.)

- Changes to Impact Aid effective in FY 2017
- All other changes effective upon enactment (December 10<sup>th</sup>, 2015)
- Program transition:
  - *Programs not substantively similar to something else in this bill will continue to receive funds until September 30, 2016*
  - *Programs no longer authorized but substantively similar to programs in the bill may finish out multi-year grants in accordance with grant terms*
  - *Programs still authorized as in previous law may use funds awarded prior to enactment under those terms, then transition to new requirements*

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## Timeline for Implementation (cont.)

- New State accountability systems (and related interventions) take effect in school year 2017-18 per law
- State accountability systems effective until August 1, 2016 (but continue to support priority/focus schools and those in improvement)
  - *ED guidance: waiver States may choose to either (1) pause identification of school, or (2) identify a new group of schools for improvement*
    - No information on what non-waiver States should do

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# TITLE I, PART A



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## Funding

- Title I funding formula remains the same
- Keeps 1% cap on State administrative funds
- **(NEW)** Pilot Program re: Title I funding formula
  - 3-year demonstration agreements with up to 50 LEAs
    - LEAs apply directly to ED for a pilot program
      - Pilot districts may consolidate certain federal funds (Titles I, II, III, Part A of IV, and Part C of V), State, and local funds to create weighted per-pupil funding systems
      - LEA must demonstrate annually that no high-poverty school received less funding on a per-pupil basis for low-income students, ELs
      - May renew for an additional 3 years at discretion of the Secretary
  - If successful, can expand to any LEA in 2019-20

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## Funding (cont.)

- **(NEW)** State-level Set-Asides
  - **Mandatory** 7% set-aside for School Improvement interventions and technical assistance (1003)
    - 95% of that amount subgranted to LEAs for comprehensive support and improvement (formula or competitive to LEAs)
    - May provide directly with approval of the LEA
    - Subgrants for no more than 4 years
  - **Optional** 3% set-aside for Direct Student Services
    - 1% of that 3% for State Administration (1003A(a)(2))
    - Remainder subgranted to LEAs, with priority to LEAs with high percentage of schools identified for comprehensive or targeted support

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## Direct Student Services Sec. 1003A

(NEW) LEA Use of Funds (1003A)(c)(3)

- 1% for outreach and communications to parents
- 2% for administration
- Allowable expenditures may include:
  - Academic/CTE coursework;
  - Credit recovery;
  - Post-secondary instruction and examination costs, including Advance Placement and International Baccalaureate test fees;
  - Transportation of LEAs implementing school choice; and
  - High Quality Academic Tutoring!

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## Tutoring?

Yes! The LEA has the option of providing tutoring.

(NEW) Each State must:

- Compile and maintain an updated list of State-approved high-quality academic tutoring providers
- Ensure that each LEA provides an adequate number of high-quality academic tutoring options to provide meaningful choice to parents (if the LEA elects to offer tutoring);
- Develop procedures for monitoring the quality of services provided; and
- Establish and implement clear criteria for removal if the provider is unsuccessful (including removal).

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## Standards and Assessments

■ States must:

- Adopt *challenging academic standards*
  - Secretary may not require standards to be submitted for approval
- Implement *aligned assessments*
- (NEW) *May allow locally-selected assessments for high schools from an approved State list*
- Requires 95% participation in assessments overall and by subgroup
  - (NEW) States in charge of enforcing requirement among LEAs
- (NEW) State may set target for limit on the total time for assessments.

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### Alternate Academic Achievement Standards Sec. 1111(b)

- 1% limitation
  - (NEW) Applied at the State level only
  - Subject to Waiver
  - Neither ED nor the State can impose a cap at the LEA-level
- BUT**
  - An LEA exceeding the 1% must justify to the SEA
- (NEW) All other alternate or modified assessments are prohibited.




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### ELIGIBLE SCHOOL ATTENDANCE AREAS SEC. 1007 (AMENDING 1113)




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### Ranking and Serving Sec. 1113(a)(3)

- **Must Rank First and Serve**
  - Exceeding 75% poverty
    - Strictly by poverty
    - Without regard to grade span
    - (NEW) May include high schools 50% or above poverty.
- **Then Rank and Serve**
  - At or below 75% poverty
    - May rank by grade span

Serve strictly in order of rank!




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# TARGETED ASSISTANCE SCHOOLS

## SEC. 1009 (AMENDING 1115)

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### Targeted Assistance Schools Sec. 1115(a)-(b)

- For schools ineligible, choose not to operate schoolwide school or do not request a waiver by the State.
  - *Default rule*
- Must identify "Title I students"
  - *Students identified as failing or at risk of failing state standards*
    - NOT – based on poverty!
  - *(NEW) In the past services had to be supplemental; however, the supplement not supplant rule has changed. Now, services must benefit eligible students.*
- Must ensure Title I funds are used to benefit identified students (allocability and allowability of Title I funds)



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### Eligible Title I Students Sec. 1115(b)(4)

Students eligible:

- *Multiple;*
- *Educationally related; and*
- *Objective criteria developed by LEA.*

- **NEW:** If preschool-grade 2, criteria, including objective criteria, established by the LEA and supplemented by the school???
- **Reminder:** SWD and EL are eligible for Title I services on the same basis as all other students.

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**SCHOOLWIDE  
SCHOOLS**  
SEC. 1008 (AMENDING 1114)

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**Schoolwide Requirements  
Sec. 1114(a)(1)-(2)**

- Consolidate and use funds, together with other federal, state, and local funds to upgrade the entire educational program of a school
- Pre-requisite: 40% poverty
  - (NEW) State may waive (previously waivable only by the Secretary).
- Not required to identify:
  - Eligible students; or
  - Individual services as supplemental.

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**Schoolwide Use of Funds  
Sec. 1114(c) and (e)**

(NEW) SW funds may be used for:

- Preschool Programs; and
- Dual or Concurrent Enrollment:
  - Training for teachers;
  - Professional Development;
  - Tuition and fees, books, required instructional materials, innovative delivery methods; and
  - Transportation.
- (NEW) Services may be delivered by non-profit or for profit third party servicers.

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## PARENT AND FAMILY ENGAGEMENT SEC. 1010 (AMENDING 1116 (FORMERLY NCLB 1118))



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### Parent and Family Engagement Set-aside Sec. 1116(a)(3)

- The LEA shall reserve at least 1%
  - To assist schools carry out activities.
  - For smaller LEAs, set-aside not required if 1% is less than \$5,000
- (NEW) 90% must go to schools, with priority to high-need schools.
  - Previously 95%

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## COMPREHENSIVE SUPPORT AND IMPROVEMENT SEC. 1111

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## Accountability Sec. 1111(b)-(c)

- (NEW) States must develop an accountability system "Annual Meaningful Differentiation" that rates schools based on metrics including:
  - Academic achievement
  - For K-8, growth or other indicator
  - For high schools, graduation rates
  - At least one "valid, reliable, comparable, and Statewide" indicator of school quality
  - Other factors as determined by the State
- **Most weight** must be given to academic indicators
- (NEW) Two levels of intervention: targeted and comprehensive support

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## Annual Meaningful Differentiation 1111(c)(4)(C)

- (NEW) States must establish a methodology for identifying schools for comprehensive support that must include:
  - At least the lowest performing 5% Title I schools;
  - All public high schools in the State failing to graduate 1/3 or more of their students; and
  - Title I schools in which any subgroup, on its own, would be identified as lowest-performing 5% and has not improved in a number of years (as defined by the State).
- State may add additional state-wide categories

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## Identifying Schools For Comprehensive Support Sec. 1111(c)(4)(D)

- (NEW) Use that meaningful differentiation to conduct an annual evaluation on the performance of LEAs, schools and subgroups
  - Applies to all public schools
  - Includes charter schools
- (NEW) Beginning 2017-2018, must identify schools for comprehensive support and improvement at least once every 3 years
  - States must use meaningful differentiation for this determination
    - Does the omnibus delayed effective date change this?
    - How does this transition work?
      - Best guess?
        - For 2017-2018, use 2016-2017 scores
        - Do you then follow NCLB or ESSA improvement activities? Not sure - waiting for guidance from USDE!

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### Public School Choice Sec. 1111(d)(1)(D)



- (NEW) A LEA may provide all students enrolled in an identified school the option to transfer to another public school.
  - Priority given to lowest-achieving children from low income families.
    - Remain in that school until he/she has completed the highest grade
- 5% of Title I, A Allocation for Public School Choice Transportation

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### Public School Choice Sec. 1003A(e)

- (NEW) 1003(A) funds may be used for school choice transportation only if the LEA does not reserve 5% for 1111(d) transportation.
- A State that received 1003A funds shall:
  - Ensure each LEA that receives and subgrant and intends to provide public school choice can provide a sufficient number of options to provide a meaningful choice for parents.

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### Targeted Support and Improvement Sec. 1111(d)(2)

- (NEW) Each SEA must:
  - Notify each LEA of any school in which any subgroup of students is consistently underperforming; and
  - Ensure the LEA provide notification to the school re: subgroup(s) identification.
- Applies to all school, not only Title I schools
  - Includes charter schools

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### Continued Support and Improvement Sec. 1111(d)(3)

- **(NEW)** The State must:
  - Establish statewide exit criteria;
    - For schools identified for comprehensive support:
      - If exit criteria is not satisfied after a number of years (not to exceed 4 years) the State must apply more rigorous interventions; and
    - For schools identified for targeted support:
      - If the exit criteria is not satisfied after a number of years (determined by the State) shall result in the identification of the school for comprehensive support.
  - Periodically review resource allocation and provide technical assistance to LEAs serving significant identified schools

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### Continued Support and Improvement (cont.) Sec. 1111(d)(3)

- **(NEW)** The State may take action to initiate improvement in any LEA with a significant number of schools:
  - that are consistently identified for comprehensive support that do not meet the exit criteria; or
  - identified for targeted support and improvement.

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### Improvement Summary

	Comprehensive Support and Improvement	Targeted Support and Improvement
<b>Year 1 (Starting 2017-2018)</b>	This year, and at least once every 3 years, the SEA identifies schools for comprehensive support. State develops exit criteria (no more than 4 years).	Annually, the SEA identifies schools for targeted support. State develops exit criteria.
<b>Meet Exit Criteria</b>	Exit Improvement Identification.	Exit Improvement Identification.
<b>No Improvement</b>	SEA applies more rigorous interventions.	Schools are identified by the SEA for comprehensive support.

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# RESERVATION OF FUNDS SEC. 1007 (AMENDING 1113)

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## LEA-level Set-Asides Sec. 1113(c)

- **Necessary and Reasonable Amount**
  - *Homeless Children and Youths*
    - **(NEW)** Use to apply only to homeless students in non-participating Title I schools; however that language was removed.
    - Now, this set-aside may be used for all homeless students.
  - *Children in local institutions for neglected children*
  - *Children in local institutions for delinquent children and neglected or delinquent children in community day programs, if appropriate*
  - *Early childhood education programs*

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## LEA-level Set-asides (cont.)

- **1% Parent and Family Engagement Sec. 1116(a)(3)**
  - **(NEW)** 90% of that amount must go to schools.
    - Previously 95%
    - Exception for LEA where 1% less than \$5,000
- **(NEW)** 5% for Public School Choice Transportation Sec 1111(d)(1)(D)

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# PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

## SEC. 1011 (AMENDING 1117) (FORMERLY NCLB 1120)

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## Ombudsman Sec. 1117(a)(3)(B)



- **(NEW)** To help ensure equity and that all consultation requirements are met, the SEA shall designate an ombudsman (an official) to monitor and enforce these requirements.

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## Expenditures/ Proportionate Share Sec. 1117(a)(4)

General Formula:

- Based on number of:
  1. Private school students
  2. From low-income families
  3. Who reside in Title I-participating public school attendance areas

Proportionate share = eligible private school children identified per school attendance area multiplied by the PPA for that area.

- **(NEW)** Must be calculated BEFORE any allowable expenditures or transfer by the LEA!

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Private school students also must get equitable share of some set-asides:

- Off the top for districtwide instruction
- Off top for parental involvement
- Off top for professional development

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**Carryover??**  
**Sec. 1117(a)(4)(B)**

- **(NEW)** Funds allocated to a local educational agency for educational services and other benefits to eligible private school children shall be obligated in the fiscal year for which the funds are received by the agency.

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**FISCAL RULES**  
**SEC. 1012 (AMENDING 1118)**  
**(FORMERLY NCLB 1120A)**

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### Maintenance of Effort (MOE) Sec. 1118(a) and 8521

- The combined fiscal effort per student or the aggregate expenditures of the LEA
- from *state and local* funds
- from preceding year must not be less than 90% of the second preceding year.



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### MOE Consequences (cont.) Sec. 8521(b)

**(NEW)** LEA is not subject to sanctions for failing to maintain 90% effort for one year (either combined fiscal per student or aggregate State and agency expenditures) provided it has not failed to meet MOE for one or more of five immediately preceding fiscal years.

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### MOE Waiver Sec. 8521(c)

Secretary of Education may waive MOE if "equitable":

- *Exceptional or uncontrollable circumstances, such as a natural disaster; or*
- **(NEW)** a change in the organizational structure of the LEA; or
- *A precipitous decline in the financial resources of the LEA.*

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## Title I, A Supplement Not Supplant (SNS) Sec. 1118(b)(1)

Federal funds must be used to supplement and in no case supplant state, and local resources



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## Prior Title I, A SNS Rule

“What would have happened in the absence of the federal funds??”

### 3 Presumptions of Supplanting

1. Required to be made available under other federal, state, or local laws
2. Provided with non-federal funds in prior year
3. Provided services to Title I students and the same services were provided to non-Title I students using state or local funds.

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## Title I, A SNS (cont.) Sec. 1118(b)(2)

- (NEW) To demonstrate compliance, the LEA shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that the school receives all the State and local funds it would otherwise receive if it were not receiving Title I funds.

- Similar to prior SW standard

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### Title I, A SNS (cont.) Sec. 1118(b)(3)

- (NEW) No LEA shall be required to:
  - Identify individual costs or services as supplemental; or
  - Provide services through a particular instructional method or in a particular instructional setting to demonstrate compliance.

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### Title I, A SNS (cont.) Sec. 1118(b)(5)

- (NEW) Timeline
  - Shall meet the compliance requirement no later than 2 years after enactment of ESSA; and
    - May use this standard once ESSA is enacted.
  - May demonstrate compliance before the end of the 2 year period using prior SNS test.

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### Title V - Transferability

(NEW) Now allows SEAs or LEAs to transfer all of their funds under Title IIA, Title IVA, or Sec. 4204(c)(3) between those provisions, and into (but not out of) Title I Parts A, C or D, Title IIIA, or Title VB

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# SECRETARIAL PROHIBITIONS SEC. 1111

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## Secretarial Prohibitions

- **(NEW)** Strictly prohibits Secretary from:
  - *Set new criteria through regulation or requiring adoption of certain policies in exchange for flexibility or approval of State plans*
  - *Require/incentivize certain standards or assessments, instructional content, programs of instruction, curricula, etc.. Sec.*
  - *Deny approval of State plans without good reason*
  - *Deny approval of waivers without good reason*
  - *Specify additional pieces of accountability system*
  - *Endorse a specific curriculum or develop a federally sponsored assessment*

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## Secretarial Prohibitions (cont.) 1111(e)(1)(C)

- **(NEW)** Issue non-regulatory guidance that
  - *provides a "strictly limited or exhaustive list" to illustrate successful implementation, or*
  - *that purports to be legally binding*
- Washington Post quotes anonymous source as saying "under this [law], the Secretary is allowed to go across the street and get a cup of coffee"



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## Waivers (Title VIII)

- LEAs must request State approval for waiver (State submits to ED)
- (NEW) ED **must** grant waiver requests within 120 days so long as they meet the requirements of the law
  - *Keeps same requirements regarding goals, student performance; keeps same restrictions on non-waivable provisions*
- (NEW) Secretary may not disapprove a waiver request for reasons outside conditions of law
- (NEW) Secretary may not place any conditions on approval of waiver request (including adoption of standards, assessments, accountability, evaluations, etc..)

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## WHAT'S NEXT?



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## Regulations

- ED held a public meeting on 1/11 (DC) and 1/19 (Los Angeles)
  - *Soliciting input on where regulations are needed*
- Negotiated rulemaking required on several issues
  - *Including Supplement-not-Supplant, standards, assessments, accountability*
  - *Dates and process TBD*
  - *If negotiated rulemaking process fails, new language allows Congress advanced review and comment period for regulations ED drafts instead*
- Other regulations to be issued at some point in 2016

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## ESSA Resources

- New ED webpage! <http://www.ed.gov/essa>
  - Will post Dear Colleague letters, links to Federal Register notices
  - Can sign up for news on ESSA
- ED email address: [essa.questions@ed.gov](mailto:essa.questions@ed.gov)

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