



Every Student Succeeds Act (ESSA) Accountability and State Plans Regulation *Frequently Asked Questions*

Below are a list of questions and answers designed to help governors and state policymakers continue their work on state plans and implementation of the Every Student Succeeds Act (ESSA) after the repeal of the accountability and state plans regulation by Congress.

Even in the absence of the regulation, governors will continue to implement the ESSA statutory language that states, districts and the civil rights community supported as a balanced approach to educational accountability and equity.

THE REGULATION IS REPEALED. WHAT SHOULD STATES DO NOW?

- **Press Forward.** Regardless of federal regulation, accountability was always in the hands of states. The absence of an accountability regulation does not mean that states must change course. If your state has developed a plan (with stakeholder input) based on the proposed or final ESSA accountability regulation, you have full authority under the law to press forward with that plan. Education Secretary Betsy DeVos has committed to honoring the submission windows provided to states under the Obama administration – April 3 and September 18, 2017.
- **Look to The Law.** ESSA was carefully negotiated and the detailed nature of the statute can stand alone in the absence of regulation. Look to the law for guidance. Given the power it places in the hands of state leaders, consider it a floor rather than a ceiling for efforts to advance equity in schools.
- **Utilize as an Opportunity.** In December 2016, [18 state education agencies](#) indicated to the U.S. Department of Education that they would submit their ESSA state plans by the April deadline. Given governors' sign off on the state plan, governors would need to start reviewing no later than early March to meet that deadline. However, the state education agencies' commitment to a submission date is not binding. If your state is one that is likely to submit early, but your governor or stakeholders believe:
 - 1) the state plan does not yet reflect the state's vision for education; or
 - 2) the state plan does not embrace innovation; or
 - 3) the majority of education stakeholders are not yet in agreement with the state plan; or
 - 4) the voices of education stakeholders have not yet been fully heard; or
 - 5) the governor has not been properly consulted throughout the plan's development process

– regulatory changes are an opportunity to press pause on submission to resolve these issues.

FREQUENTLY ASKED QUESTIONS:

- **What regulations on ESSA have been issued by the Department of Education?**
 - The Department has issued [two final regulations on assessments](#) in ESSA ([Title I, part A](#), addressing annual state-wide assessments and [Title I part B](#), laying out guidelines for a new pilot for innovative assessments) and a [final regulation on accountability and state plans](#). The Department's proposed regulation on Title I funding for disadvantaged students, [supplement, not supplant](#), was never finalized and will not go into effect.
- **Will all the final regulations that have been issued go into effect?**

- Both regulations on assessments went into effect in early January. The final regulation on accountability and state plans was set to go into effect on January 30, but became subject to a White House directive delaying all regulations not in effect on January 20, 2017 by 60 days. The U.S. Senate and House of Representatives have passed a disapproval resolution under the Congressional Review Act for the accountability and state plans regulation and the President is expected to sign and permanently block the existing regulation.
- **What is the Congressional Review Act (CRA)?**
 - The Congressional Review Act (CRA) is an oversight tool that Congress may use to overturn regulations issued by a federal agency that allows regulations to be struck down by a simple majority vote along with the President's signature. A CRA resolution not only prevents the regulation from taking effect, but precludes any federal agency from re-issuing a regulation in “substantially the same form.” For more information, click [here](#) to see a Congressional Research Service FAQ.
- **Can the Department of Education issue a regulation to replace one that was overturned using the Congressional Review Act?**
 - Unclear. The CRA precludes any federal agency from re-issuing a nullified regulation in “substantially the same form.” However, the CRA does not define the phrase “substantially the same form,” and prohibits judicial review of that term or others contained in the CRA. Potentially, the Department of Education could, in close consultation with Congress and without their objection, develop new regulations on some aspects of the nullified regulation.
- **What provisions of the accountability and state plans regulation do Congress and education stakeholders believe could prove burdensome for ESSA implementation?**
 - In September 2016, a group of bipartisan U.S. Senators, including Joe Manchin (D-WV) and Heidi Heitkamp (D-ND), sent a [letter](#) to the White House indicating that the accountability and state plans regulation under ESSA “do[es] not comply with the plain language of the statute and Congressional intent.” [Congress](#) and the [National Governors Association](#) raised objections to provisions, including those that minimize state flexibility to calculate school determinations, improve low-performing schools and increase assessment participation rates.
- **With the repeal of the accountability and state plans regulation, will equity “guardrails” in ESSA go away?**
 - No. According to a December 2015 ESSA endorsement [letter](#) from a broad civil rights coalition, including Education Trust and The Leadership Conference, the law requires states to work “within federal guardrails to design systems that assure genuine equity and excellence for all students.” ESSA guardrails they support in the letter include annual assessments, transparent data reporting and statewide accountability systems that measure all groups of students. These requirements do not cease to exist with the repeal of any regulation and governors will vigilantly implement these provisions and others throughout ESSA that ensure students from all backgrounds receive a high-quality education.
- **With the repeal of the accountability and state plans regulation, will clarity and flexibility illustrated in that regulation go away?**
 - No. It is true that the regulation [included](#) clarity and flexibility in several areas. Yet, a regulation is not required to ensure clarity and flexibility for states and school districts under a federal law. NGA expects the Trump administration to honor any state plan that utilizes these provisions. Although no longer carrying the weight of regulation, clarifications of statutory language included in the regulation would remain as a resource for states to better understand the law. In the absence of the regulation, NGA will urge the Department to ensure that many sections of the regulation are preserved through guidance, in possible new regulations and “Dear Colleague” letters. All ESSA resources must be composed based on meaningful stakeholder input. Until those documents are issued, states and school districts may continue to use the text of the regulation as a reference for implementation and state plans, even though it is repealed.

- **In the absence of an accountability and state plans regulation, what actions can the Department of Education take to clarify the role of states beyond the statutory language of ESSA?**
 - The Department can issue non-binding regulatory guidance at any time to clarify its interpretation of ESSA statutory language, or set forth policy on any technical issues that arise during implementation. Although guidance documents do not carry the full weight of law in the way final regulations do, the Department may use them to provide additional direction or clarity for states and stakeholders.
- **Have the deadlines to submit ESSA state plans changed?**
 - No. Secretary DeVos has promised to uphold the [original submission deadlines](#) for state plans. States may submit their state plans prior to either of the two submission dates below, after which a peer review process of each group of plans will be conducted.
 - **April 3, 2017**
 - **September 18, 2017**

All states must submit a set of [assurances](#) to the Department no later than June 30 in order to receive federal fiscal year 2017 funds for programs included in the state consolidated plan, even if the state intends to submit a plan on September 18.

- **Are states required to pause development of their state plans or other actions in the implementation of ESSA based on the repeal of the accountability and state plans regulation?**
 - No. States do not need to pause their work on state plans. Secretary DeVos has reiterated that she does not intend for the repeal of the regulations to impede the progress states are making in implementing ESSA. In a [letter](#) to states she expressed her commitment to implement ESSA as written and to the timeline states have been following to develop their state plans and submit them for approval, with the intent of minimizing disruption and allowing states to continue to build on the work they have already done. States should move forward with writing their plans, using the statutory text of ESSA, despite the repeal of the regulation.

If state policymakers believe that development of their consolidated state plan does not yet adequately address the concerns of all stakeholders, and more time to continue development of the plan is needed, states could consider submitting their consolidated plan on the later submission deadline of September 18, 2017, rather than April 3, 2017.

- **If a state has begun development of a consolidated state plan based on the requirements in the accountability and state plans regulation, will the state have to change their plan prior to submission?**
 - No. Even with the regulation no longer in effect, states can keep any elements they wish to use in their state plans designed according to the regulation. If a state is satisfied with the framework provided by the regulation, that state can move forward with submitting a plan to the Department inspired by the regulation without concern that their plan will be rejected. State policymakers should continue to move forward with building a consolidated state plan that best serves the needs of their students within the framework of ESSA statutory language – whether the features of that plan are based on the regulation or not.
- **How might the repeal of the regulation present an opportunity for states?**
 - With the repeal of the regulation by Congress, states are now presented with an opportunity to return to the original framework presented in the statutory language of ESSA to build their new state accountability systems. The review and change also provide states the ability to pause and reconsider their work, ensuring that all stakeholder voices have been considered and every opportunity for innovation has been taken prior to submitting a state plan.

- **Has the state plan template provided by the U.S. Department of Education changed?**
 - The Department is drafting a revised consolidated state plan template that is more focused on ESSA's statutory requirements in lieu of regulatory ones. It is expected to be released by March 13. Chief state school officers who have already submitted their state plans to their governor for review must revise their plan to fit the new template and re-submit to their governor. The statutory 30-day time period for review by the governor would begin once the revised plan is submitted for gubernatorial review. If the governor consumes the entire 30 days to review the state plan, their state would not be able to submit to the U.S. Department of Education by the April 3 deadline and must wait until September 18. Governors are entitled, by statute, to the entire 30 days.

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Document will be updated as this issue develops.