**1% Cap Waiver and Waiver Extension Requests:**

**Federal Guidance History**

Every Student Succeeds Act (ESSA) was signed by President Obama on Dec. 5, 2015.

<https://www.ed.gov/essa?src=rn>

Federal Regulations were finalized December 8, 2016 and published in the Federal Register.

<https://www.govinfo.gov/content/pkg/FR-2016-12-08/pdf/2016-29128.pdf>

ESEA requires that only students with the most significant cognitive disabilities may take an AA-AAAS and limits the percentage of tested students that a State may assess with an AA-AAAS to no more than 1.0 percent of all students in the grades assessed in a State for each subject (reading/language arts, mathematics and science). This requirement took effect beginning with the 2017-18 school year (SY).

Letter from OESE (Patrick Rooney) and OSERS (Ruth E. Ryder) (May 16, 2017) with guidance about writing the first year of waiver requests for the 2017-18 SY:

https://www2.ed.gov/admins/lead/account/saa/onepercentcapmemo51617.pdf

The Department granted 23 States a waiver for the 2017-18 SY.

Letter from OESE (Patrick Rooney) and OSERS (Ruth E. Ryder) (August 27, 2018) with guidance about writing first-time waiver requests for some states for the 2018-29 SY and waiver extension requests for some states (states receiving waivers for the 2017-18 SY would seek a waiver extension request for 2018-19):

<https://sites.ed.gov/idea/files/ossstateassessmentltr092718.pdf>

Letter from OESE (Patrick Rooney) and OSERS (Ruth Ryder) (March 28, 2019)with guidance about the consequences for states out of compliance with the 1% Cap requirements (with 2017-18 serving as the baseline year):

<https://www2.ed.gov/admins/lead/account/saa/state1capconsequences19final.pdf>

Letter from ED (Secretary of Education Betsy DeVoss (March 20, 2020) inviting states to request waivers of assessment and accountability requirements due to the pandemic. All states received waivers for the 2019-20 SY, including waivers for the alternate assessment.

<https://www2.ed.gov/policy/gen/guid/secletter/200320.html>

Guidance from OESE (Patrick Rooney) and OSERS (Laurie Vanderploeg) (June 9, 2020) on how to submit waiver and waiver extension requests for the 2020-21 SY given school closures and waivered state assessments during the pandemic:

<https://oese.ed.gov/files/2020/06/One-percent-waiver-memo-to-states-2020-FINAL.pdf>

Letter from U.S. Department of Education to State School Officers indicating the requirement of assessment administration in the 2020-2021 SY and guidance about assessment flexibilities (February 22, 2021):

<https://www2.ed.gov/policy/elsec/guid/stateletters/dcl-assessments-and-acct-022221.pdf>

Guidance from OESE (Patrick Rooney) and OSERS (David Cantrell) (Oct. 29, 2021) on how states should develop their 2021-2022 waiver/waiver extensions requests: <https://oese.ed.gov/files/2021/10/Memo-to-States-re-One-Percent-Waiver-Requirements-2021-2022.pdf>

Guidance from OESE (Patrick Rooney) and OSERS (Valerie Williams) (Sept. 20, 2022) on how states should develop their 2022-2023 waiver/waiver extension requests: <https://oese.ed.gov/files/2022/09/Memo-to-States-re-One-Percent-Waiver-Requirements-2022-2023.pdf>

Guidance from OESE (Patrick Rooney) and OSERS (Valerie Williams) (Sept. 20, 2023) on how states should develop their 2023-2024 waiver/waiver extension requests: (<https://oese.ed.gov/files/2023/09/OnePercentWaiverRequirements20232492023.pdf> )

Timeline Table

|  |  |
| --- | --- |
| 2015 | ESSA Signed |
| 2016 | ESSA Regs Finalized |
| 2017-18 SY | First year states could apply for a 1% waiver |
| 2018-19 SY | Second year states could apply for a 1% waiver or 1% waiver extension |
| March 28, 2019 | Framework for classifying consequences for State out of compliance with the 1.0 percent cap on AA-AAAS participation requirement was announced by the Department of Education |
| 2019-2020 SY | Third year - all states received waivers of assessments due to pandemic which removed 1% requirement for that year |
| 2020-2021 SY | Fourth year - states required to administer statewide assessments again. Waiver/waiver extension requests could be submitted |
| 2021-2022 SY | Fifth year – Waiver/waiver extension requests could be submitted |
| 2022-2023 SY | Sixth year – Waiver/waiver extension requests could be submitted |
| **2023-2024 SY** | **Seventh year Waiver/waiver extension requests could be submitted** |

Additional Information

State Requests for Waivers of ESEA Provisions for SSA-Administered Programs

<https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/essa-state-plans-assessment-waivers/>

These are ED responses to State requests for waivers from requirements under Title I, II, III, and IV-B of the Elementary and Secondary Education Act, including waiver / waiver extension requests for the 1% Cap on AA-AAAS participation. They may be filtered by year and waiver description.

The Advocacy Institute History Document

<https://www.advocacyinstitute.org/ESSA/AAcap.history.Sept2022.pdf>

The Advocacy Institute [*Status of State-level Waivers to Exceed the One Percent Cap on Alternate Assessments*](https://www.advocacyinstitute.org/ESSA/ESSA-OnePercentCapByState.shtml)website