

112TH CONGRESS  
1ST SESSION

# S. 280

To provide for flexibility and improvements in elementary and secondary education, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2011

Ms. COLLINS (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To provide for flexibility and improvements in elementary and secondary education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No Child Left Behind  
5 Flexibility and Improvements Act”.

6 **SEC. 2. DISCRETION TO MODIFY ADEQUATE YEARLY**  
7 **PROGRESS TIMELINE.**

8 Section 1111(b)(2)(F) of the Elementary and Sec-  
9 ondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(F))  
10 is amended—

1           (1) by striking “(F) TIMELINE.—Each State”  
2           and inserting the following:

3                   “(F) TIMELINE.—

4                           “(i) IN GENERAL.—Each State”; and

5           (2) by adding at the end the following:

6                           “(ii) DISCRETION OF SECRETARY TO  
7                   MODIFY THE TIMELINE.—Every 3 years,  
8                   the Secretary—

9                                   “(I) shall review the require-  
10                                   ments of the timeline established in  
11                                   clause (i); and

12   “(II) may issue guidance or regu-  
13   lations modifying such requirements if  
14   the Secretary determines, at the Sec-  
15   retary’s discretion and after a review  
16   of the progress of the States towards  
17   making adequate yearly progress for  
18   the 2013–2014 school year, that  
19   modifications to the timeline are in  
20   the interests of improving student  
21   achievement and are in keeping with  
22   the purposes of this title.”.

1 **SEC. 3. ALTERNATIVE ACCOUNTABILITY SYSTEMS.**

2 Section 1111(b)(2) of the Elementary and Secondary  
3 Education Act of 1965 (20 U.S.C. 6311(b)(2)) is further  
4 amended—

5 (1) by striking subparagraph (I) and inserting  
6 the following:

7 “(I) ANNUAL IMPROVEMENT FOR  
8 SCHOOLS.—

9 “(i) IN GENERAL.—Each year, for a  
10 school to make adequate yearly progress  
11 under this paragraph—

12 “(I) each group of students de-  
13 scribed in subparagraph (C)(v) must  
14 meet or exceed the objectives set by  
15 the State under subparagraph (G), ex-  
16 cept that if any group described in  
17 subparagraph (C)(v) does not meet  
18 those objectives in any particular  
19 year, the school shall be considered to  
20 have made adequate yearly progress  
21 if—

22 “(aa) the percentage of stu-  
23 dents in that group who did not  
24 meet or exceed the proficient  
25 level of academic achievement on  
26 the State assessment under para-

1 graph (3) decreased by 5 percent  
2 over the past year, or an aggregate  
3 of 10 percent over 2 years,  
4 and that group has made  
5 progress on 1 or more of the academic  
6 indicators described in  
7 clause (vi) or (vii) of subparagraph  
8 (C); or

9 “(bb) the students in that  
10 group demonstrate that the students  
11 are making progress towards  
12 proficiency through an additional  
13 model or system for  
14 measuring student progress described  
15 in subparagraph (J) and  
16 that group has made progress on  
17 1 or more of the academic indicators  
18 described in clause (vi) or  
19 (vii) of subparagraph (C); and

20 “(II) not less than 95 percent of  
21 each group of students described in  
22 subparagraph (C)(v) who are enrolled  
23 in the school are required to take the  
24 assessments, consistent with paragraph  
25 (3)(C)(xi) and with accom-

1 modations, guidelines, and alternative  
2 assessment provided in the same man-  
3 ner as those provided under section  
4 612(a)(16)(A) of the Individuals with  
5 Disabilities Education Act and para-  
6 graph (3), on which adequate yearly  
7 progress is based (except that the 95  
8 percent requirement described in this  
9 clause shall not apply in a case in  
10 which the number of students in a  
11 category is insufficient to yield statis-  
12 tically reliable information or the re-  
13 sults would reveal personally identifi-  
14 able information about an individual  
15 student).

16 “(ii) CHILDREN WITH DISABIL-  
17 ITIES.—In the case of a child with a dis-  
18 ability (as defined in section 602(3) of the  
19 Individuals with Disabilities Education  
20 Act), a State may deem the child to have  
21 met the State’s proficient level of academic  
22 achievement on the State assessments for  
23 purposes of calculating adequate yearly  
24 progress under this section if—

1           “(I) the student’s individualized  
2           education program team (as defined  
3           in section 614(d)(1)(B) of such Act)  
4           designates an alternate assessment  
5           based on alternate or modified student  
6           academic achievement standards as a  
7           more appropriate measure of the stu-  
8           dent’s academic progress and achieve-  
9           ment for purposes of the assessment  
10          requirements under this part; and

11           “(II) the student achieves a pro-  
12          ficient score on such alternate assess-  
13          ment.

14          “(iii) STATE EDUCATIONAL AGENCY  
15          REPORT.—For any year that a State edu-  
16          cational agency makes use of the flexibility  
17          provided by this section to allow alternate  
18          assessments for more than 3 percent of the  
19          total student population statewide, the  
20          State educational agency shall make avail-  
21          able to the public a report that includes  
22          the percentage of all special education stu-  
23          dents in the State who were assessed ac-  
24          cording to clause (ii).”;

1           (2) by redesignating subparagraphs (J) and (K)  
2 as subparagraphs (L) and (M), respectively; and

3           (3) by inserting after subparagraph (I) (as  
4 amended by paragraph (1)) the following:

5                   “(J) ADDITIONAL MODELS AND SYSTEMS  
6 FOR MEASURING STUDENT PROGRESS.—In de-  
7 veloping a single, statewide State accountability  
8 system pursuant to subparagraph (A), a State  
9 may establish models and systems for meas-  
10 uring student progress for purposes of deter-  
11 mining whether an agency or school has made  
12 adequate yearly progress that are in addition to  
13 the models and systems otherwise described in  
14 this paragraph if the models and systems are in  
15 keeping with the purposes of this title. Addi-  
16 tional models and systems that measure student  
17 progress under this paragraph may include—

18                           “(i) cohort growth models that—  
19                                   “(I) demonstrate progress based  
20 on longitudinal student assessment re-  
21 sults indicating improvement in the  
22 academic performance of the same co-  
23 hort of students over time; and

24                                   “(II) may in some instances  
25 specify different starting points, dif-

1           ferent intermediate goals, and dif-  
2           ferent annual measurable objectives  
3           for different cohorts;

4           “(ii) indexing systems that dem-  
5           onstrate progress based on improvement in  
6           assessment scores for students below the  
7           proficient level, such as improvements from  
8           the below basic to basic level, or from basic  
9           to another intermediate level below the  
10          proficient level, if the system does not in-  
11          clude improvement in students’ scores for  
12          students who scored at the proficient level  
13          and higher; or

14          “(iii) a system that demonstrates  
15          progress based on improvements in closing  
16          the achievement gap or making progress  
17          toward another State-established high-  
18          achievement target, such as a system that  
19          demonstrates progress towards having all  
20          subgroups meet or exceed the current per-  
21          centage of proficient students at the  
22          State’s top-performing schools (such as the  
23          top 20 percent of schools), if the system  
24          requires continued improvement towards

1           subsequently higher targets until all stu-  
2           dents have reached the proficient level.

3           “(K) REQUIREMENT FOR GUIDANCE FROM  
4           THE SECRETARY ON ADDITIONAL MODELS AND  
5           SYSTEMS       FOR       MEASURING       STUDENT  
6           PROGRESS.—

7                   “(i) IN GENERAL.—Not later than  
8                   120 days after the date of enactment of  
9                   the No Child Left Behind Flexibility and  
10                  Improvements Act, the Secretary shall es-  
11                  tablish specific models of additional models  
12                  and systems for measuring student  
13                  progress that meet the requirements of  
14                  subparagraph (J), including models of co-  
15                  hort-growth systems, indexing systems, or  
16                  high-achievement target systems described  
17                  in such subparagraph.

18                  “(ii) MAXIMUM FLEXIBILITY OF MOD-  
19                  ELS.—To the extent possible, the models  
20                  described in clause (i) shall demonstrate  
21                  the maximum amount of flexibility avail-  
22                  able under this part in the design of addi-  
23                  tional models and systems for measuring  
24                  student progress.

1           “(iii) TASK FORCE.—The Secretary  
 2           shall create a task force to provide guid-  
 3           ance and other technical assistance to  
 4           those States interested in incorporating ad-  
 5           ditional models and systems for measuring  
 6           student progress into their State account-  
 7           ability plan.”.

8 **SEC. 4. STATE OPTION REGARDING STUDENTS WITH LIM-**  
 9 **ITED ENGLISH PROFICIENCY.**

10           Section 1111(b)(2) of the Elementary and Secondary  
 11 Education Act of 1965 (20 U.S.C. 6311(b)(2)) (as amend-  
 12 ed by section 3) is further amended by adding at the end  
 13 the following:

14           “(N) STATE OPTION REGARDING STU-  
 15           DENTS WITH LIMITED ENGLISH PRO-  
 16           FICIENCY.—

17           “(i) IN GENERAL.—In determining  
 18           whether a school, local educational agency,  
 19           or State has made adequate yearly  
 20           progress under this subsection, a State  
 21           shall have the option to include in the stu-  
 22           dents with limited English proficiency sub-  
 23           group a student who was formerly included  
 24           in the subgroup and subsequently acquired  
 25           proficiency in English.

1           “(ii) DURATION OF INCLUSION IN  
2 THE SUBGROUP.—A State may include a  
3 student described in clause (i) in the stu-  
4 dents with limited English proficiency sub-  
5 group until the student completes sec-  
6 ondary school.

7           “(iii) RULES OF CONSTRUCTION.—  
8 Nothing in this subparagraph shall be con-  
9 strued—

10                   “(I) to count a student described  
11 in clause (i) as a student with limited  
12 English proficiency for purposes of—

13                           “(aa) determining a State-  
14 defined minimum subgroup size;  
15 and

16                           “(bb) allocating funds under  
17 title III; or

18                   “(II) to require a student de-  
19 scribed in clause (i)—

20                           “(aa) to continue to take a  
21 limited English proficiency as-  
22 sessment under paragraph (7);  
23 and

1                   “(bb) to receive language  
2                   services provided to students with  
3                   limited English proficiency.”.

4 **SEC. 5. LOCAL ACADEMIC ASSESSMENTS.**

5           Section 1111(b)(3)(A) of the Elementary and Sec-  
6   ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(A))  
7   is amended—

8                   (1) by striking “(A) IN GENERAL.—Each State  
9   plan” and inserting the following:

10                   “(A) IMPLEMENTATION OF ASSESS-  
11   MENTS.—

12                   “(i) IN GENERAL.—Each State plan”;

13                   and

14                   (2) by adding at the end the following:

15                   “(ii) RULE OF CONSTRUCTION RE-  
16   GARDING USE OF LOCAL ASSESSMENTS.—

17   Nothing in this Act shall be construed to  
18   prohibit a State from using a local assess-  
19   ment system or a mixed system of State  
20   and local assessments in carrying out  
21   clause (i), if the assessment system—

22                   “(I) is aligned with the State’s  
23   content and achievement standards  
24   and provides coherent information

1 about student attainment of those  
2 standards;

3 “(II) is valid and reliable, and  
4 consistent with relevant professional  
5 and technical standards;

6 “(III) provides individual student  
7 reports and itemized score analysis;  
8 and

9 “(IV) allows the State to aggre-  
10 gate, with confidence, data from dis-  
11 parate local assessments.

12 “(iii) REQUIRED TECHNICAL ASSIST-  
13 ANCE.—Not later than 120 days after the  
14 date of enactment of the No Child Left  
15 Behind Flexibility and Improvements Act,  
16 the Secretary shall provide models of local  
17 assessment systems or mixed systems of  
18 State and local assessments meeting the  
19 requirements described in clause (ii), and  
20 shall provide guidance and technical assist-  
21 ance to States on ways that these systems  
22 may be used to satisfy the assessment re-  
23 quirements of this part.”.

1 **SEC. 6. DEFERRAL OF ACADEMIC ASSESSMENTS.**

2 Section 1111(b)(3)(D) of the Elementary and Sec-  
 3 ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(D))  
 4 is amended by striking clauses (i) through (iv) and insert-  
 5 ing the following:

6 “(i) \$640,000,000 for fiscal year  
 7 2011; and

8 “(ii) \$670,000,000 for fiscal year  
 9 2012.”.

10 **SEC. 7. ADEQUATE YEARLY PROGRESS BY GROUP AND SUB-**  
 11 **JECT.**

12 Section 1116(b) of the Elementary and Secondary  
 13 Education Act of 1965 (20 U.S.C. 6316(b)) is amended—

14 (1) in subparagraph (A) of paragraph (1), by  
 15 inserting “with respect to the performance of a par-  
 16 ticular group of students described in section  
 17 1111(b)(2)(C)(v) in the same academic subject,”  
 18 after “that fails, for 2 consecutive years,”;

19 (2) in the matter preceding subparagraph (A)  
 20 of paragraph (5), by inserting “with respect to the  
 21 performance of a particular group of students de-  
 22 scribed in section 1111(b)(2)(C)(v) in the same aca-  
 23 demic subject,” after “that fails to make adequate  
 24 yearly progress,”;

25 (3) in the matter preceding clause (i) of para-  
 26 graph (7)(C), by inserting “with respect to the per-

1 performance of a particular group of students described  
 2 in section 1111(b)(2)(C)(v) in the same academic  
 3 subject,” after “that fails to make adequate yearly  
 4 progress,”; and

5 (4) in the matter preceding clause (i) of para-  
 6 graph (8)(A), by inserting “with respect to the per-  
 7 formance of a particular group of students described  
 8 in section 1111(b)(2)(C)(v) in the same academic  
 9 subject,” after “continues to fail to make adequate  
 10 yearly progress,”.

11 **SEC. 8. MODIFICATION OF THE DEFINITION OF HIGHLY**  
 12 **QUALIFIED TEACHER.**

13 (a) IN GENERAL.—Subpart 1 of part A of title I of  
 14 the Elementary and Secondary Education Act of 1965 (20  
 15 U.S.C. 6311 et seq.) is amended by adding at the end  
 16 the following:

17 **“SEC. 1120C. MODIFICATION OF THE DEFINITION OF HIGH-**  
 18 **LY QUALIFIED TEACHER.**

19 “(a) HIGHLY QUALIFIED TEACHERS OF MULTIPLE  
 20 ACADEMIC SUBJECTS.—Notwithstanding section  
 21 9101(23) or any other provision of law, a middle or sec-  
 22 ondary school teacher employed to teach multiple aca-  
 23 demic subjects shall be deemed to be highly qualified for  
 24 purposes of this part, if—

1           “(1) the teacher meets the requirements of sec-  
2           tion 9101(23)(A);

3           “(2) the teacher has a bachelor’s degree;

4           “(3) the teacher has demonstrated a high level  
5           of competency in at least one subject taught by the  
6           teacher by—

7                   “(A) passing a test described in section  
8                   9101(23)(B)(ii)(I) that is applicable to such  
9                   subject; or

10                   “(B) successful completion of a course of  
11                   study, certification, or credential described in  
12                   section 9101(23)(B)(ii) that is applicable to  
13                   such subject; and

14           “(4)(A) the State educational agency makes a  
15           determination, for a period of not more than 3 years  
16           at a time, that—

17                   “(i) the teacher should be considered high-  
18                   ly qualified for purposes of this part based on  
19                   a showing that the teacher is making progress  
20                   toward becoming highly qualified as defined in  
21                   section 9101(23); and

22                   “(ii) at the time the State educational  
23                   agency makes such determination, the teacher  
24                   teaches in a local educational agency of the  
25                   State that has provided the State educational

1 agency with evidence (that may include the fact  
2 that the local educational agency serves a small  
3 and rural school facing unique staffing or hir-  
4 ing challenges that require teachers to teach  
5 multiple academic subjects) that the local edu-  
6 cational agency has made a reasonable effort to  
7 provide teachers who are highly qualified as de-  
8 fined in section 9101(23) to every student  
9 served by the local educational agency; or

10 “(B) the teacher has an academic minor con-  
11 sisting of not less than 15 credit hours, or the equiv-  
12 alent of an academic minor as defined by the State  
13 educational agency in its State plan pursuant to sec-  
14 tion 1119(a)(2), in each academic subject that is  
15 taught by the teacher (other than a subject for  
16 which the teacher has demonstrated a high level of  
17 competency under paragraph (3)), and each such  
18 subject is related to a subject for which the teacher  
19 has demonstrated a high level of competency under  
20 paragraph (3).

21 “(b) REPORT.—For each year that a teacher in a  
22 State is deemed to be highly qualified under subsection  
23 (a), the State educational agency in the State shall make  
24 available to the public a report that includes—



1           (1) FINDING.—Congress finds that, based on  
2 the Office of Inspector General of the Department of  
3 Education’s September 2006 report entitled “The  
4 Reading First Program’s Grant Application Proc-  
5 ess”, it is crucial to achieving the goals of the Read-  
6 ing First program under subpart 1 of part B of title  
7 I of the Elementary and Secondary Education Act  
8 of 1965 (20 U.S.C. 6361 et seq.) that greater flexi-  
9 bility is afforded to program participants, including  
10 allowing participants to choose from a variety of sci-  
11 entifically based reading programs.

12           (2) USE OF FUNDS FOR READING ACTIVI-  
13 TIES.—Section 1202(c)(7) of the Elementary and  
14 Secondary Education Act of 1965 (20 U.S.C.  
15 6362(c)(7)) is amended by adding at the end the fol-  
16 lowing:

17           “(C) READING ACTIVITIES FOR INDI-  
18 VIDUAL STUDENTS.—Notwithstanding any  
19 other provision of this subpart, an eligible local  
20 educational agency may use the funds provided  
21 under the subgrant for any activity described in  
22 subparagraph (A) that is provided to a student  
23 in a manner other than on a classwide instruc-  
24 tion basis, including small group instruction  
25 and one-to-one instruction.”.

1 **SEC. 10. DEFINITION OF HIGHLY QUALIFIED.**

2 Section 9101(23)(B)(ii)(II) of the Elementary and  
3 Secondary Education Act of 1965 (20 U.S.C.  
4 7801(23)(B)(ii)(II)) is amended by striking  
5 “credentialing; and” and inserting the following:  
6 “credentialing,  
7 “except that the Secretary shall promul-  
8 gate regulations permitting a teacher to  
9 demonstrate subject area competence in  
10 history, geography, economics, government,  
11 civics, or related subjects at middle or sec-  
12 ondary schools in the State through a  
13 State social studies certificate that quali-  
14 fies the teacher to teach such subjects;  
15 and”.

○