

# Background

No. 2044  
June 19, 2007



Published by The Heritage Foundation

## Reforming No Child Left Behind by Allowing States to Opt Out: An A-PLUS for Federalism

*Dan Lips*

Congress has begun hearings on the reauthorization of No Child Left Behind (NCLB). Created in 2002, No Child Left Behind increased federal funding for K–12 education and established new requirements for state and local school systems across the country.

As part of the NCLB reauthorization, Congress should consider various proposed reforms. In March, Senators Jim DeMint (R–SC) and John Cornyn (R–TX) and five other sponsors introduced the Academic Partnerships Lead Us to Success (A-PLUS) Act (S. 893). In the House of Representatives, Representative Pete Hoekstra (R–MI) and 60 cosponsors are sponsoring another version of the A-PLUS Act (H.R. 1539).

Both versions of the A-PLUS Act are geared to addressing problems that have become apparent during the implementation of No Child Left Behind as well as systemic problems that have persisted in federal education policy for decades. Specifically, the proposals would promote greater state and local control in education while maintaining true accountability through state-level testing and information reporting to parents to ensure transparency.

### **NCLB After Five Years**

For more than four decades, Congress has sought to improve public education in America by creating new federal programs and increasing federal spending on education. In fiscal year (FY) 2007, the federal government will spend \$23.5 billion on programs that fall under the original Elementary and Secondary Educa-

### **Talking Points**

- The No Child Left Behind (NCLB) Act of 2001 has increased the annual compliance burden of federal education programs by 7 million hours nationwide, led to distortions in state testing policies that threaten transparency, and maintained funding for ineffective programs.
- Under the proposed Academic Partnerships Lead Us to Success (A-PLUS) Act (S. 893 and H.R. 1539), states could opt out of NCLB and instead decide for themselves how to use federal funds to improve education. States would maintain state-level standards, assessments, and public reporting to preserve transparency in public education.
- By restoring greater state control of education, the A-PLUS Act would allow states to end inefficient and ineffective federal programs, reallocate funds toward state-directed initiatives to improve student learning, and reduce spending on administrative costs and bureaucracy. State policymakers—with greater input from parents and other stakeholders—could take responsibility for strengthening public education in local communities.

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/Education/bg2044.cfm](http://www.heritage.org/Research/Education/bg2044.cfm)

Produced by the Domestic Policy Studies Department

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002–4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

tion Act of 1965, which is now called No Child Left Behind.<sup>1</sup>

Five years have passed since President Bush signed the No Child Left Behind Act of 2001. The Bush Administration's original blueprint for NCLB included some valuable reform principles, such as reducing bureaucracy, promoting state flexibility, and expanding parental choice in education. However, those valuable reform ideas were either watered down or eliminated during the legislative process on Capitol Hill in 2001. The bill that emerged from Congress greatly expanded federal power in education while doing little to eliminate bureaucracy, restore state and local control of education, or empower parents.

**The Federal Burden on Education.** No Child Left Behind significantly increased federal spending on and authority over public education in America. According to the U.S. Department of Education, the Bush Administration's budget request for FY 2008 would increase NCLB spending to \$24.4 billion—a 41 percent increase over FY 2001 spending.<sup>2</sup> This budget request also includes a 59 percent increase in Title I grants to local education agencies.<sup>3</sup>

Yet these funding increases have also increased the administrative burden on state and local authorities. No Child Left Behind created new rules and regulations for schools and significantly increased compliance costs for state and local governments. According to the Office of Management and Budget, NCLB increased state and local governments' annual paperwork burden by 6,680,334 hours at an estimated cost of \$141 million.<sup>4</sup> Moreover, the federal government now has authority over issues that once were reserved to the local level, such as student testing policies.

**Unintended Consequences.** The centerpiece of the No Child Left Behind Act is a requirement for annual state-level student testing, information reporting to the public, and a series of mandated sanctions for schools that fail to demonstrate adequate yearly progress toward state achievement benchmarks. The purpose of this provision was to shift the focus of federal education policy from inputs to outputs and student achievement. However, five years of experience implementing NCLB has exposed structural problems in the requirement.

Under NCLB, states must test students in every grade between 3rd grade through 8th grade and once in high school. The law requires states to report on the performance of various subgroups of student populations, such as ethnic minorities, those from low-income families, and those with limited English skills. Students and student subgroups are required to show increasing gains in student proficiency scores. The law sets a goal that all children will score proficient by 2014.<sup>5</sup>

While the Department of Education sets the broad framework of this accountability system, the states maintain control of state-level tests and performance measures. This means that states have the responsibility for defining "proficiency" and setting performance levels on state tests. As a result, some states have lowered standards on state tests to avoid federal sanctions.<sup>6</sup> Ironically, while No Child Left Behind has sought to improve public school accountability and strengthen standards-based reform across the nation, the law's perverse incentives are threatening to eliminate transparency by encouraging all states to lower standards to avoid federal sanctions.

1. U.S. Department of Education, "Summary of Discretionary Funds, Fiscal Years 2001–2008," March 28, 2007, at [www.ed.gov/about/overview/budget/budget08/08bylevel.pdf](http://www.ed.gov/about/overview/budget/budget08/08bylevel.pdf) (May 1, 2007).
2. *Ibid.*
3. *Ibid.*
4. *Federal Register*, Vol. 71, No. 202 (October 19, 2006), p. 61,730.
5. The White House, "Fact Sheet: The No Child Left Behind Act: Five Years of Results for America's Children," January 8, 2007, at [www.whitehouse.gov/news/releases/2007/01/20070108-6.html](http://www.whitehouse.gov/news/releases/2007/01/20070108-6.html) (May 1, 2007).
6. Matthew Ladner, Ph.D., and Eugene Hickok, Ph.D., "The Reauthorization of No Child Left Behind: A Time for Choosing Between Federal Management and Citizen Ownership of American Education," Heritage Foundation *Background*, forthcoming.

**Funds Wasted on Ineffective Programs.** One of the problems in President Bush's original No Child Left Behind proposal was that it continued to fund ineffective programs. "This 'program for every problem' solution has begun to add up—so much so that there are hundreds of education programs spread across 39 federal agencies at a cost of \$120 billion a year," wrote the White House in February 2001.<sup>7</sup> Regrettably, this problem persists.

For FY 2008, the Bush Administration has proposed eliminating 44 Education Department programs that cost taxpayers a total of approximately \$2.2 billion annually. Yet the White House has unsuccessfully proposed terminating many of these same programs in previous years. These are programs that the Bush Administration states "have achieved their original purpose, duplicate other programs, are narrowly focused, or unable to demonstrate effectiveness."<sup>8</sup> For example, the \$2.2 million Women's Educational Equity Act promotes educational equality for women and girls, yet female students generally outperform male students on test scores and other performance measures.<sup>9</sup>

In addition, Members of Congress earmark hundreds of millions of dollars in federal education spending for specific projects. According to the Office of Management and Budget, the FY 2005 Department of Education budget includes 1,199 earmarks totaling \$483 million.<sup>10</sup> The department's Office of Innovation and Improvement budget included \$289 million in earmarks, including \$198,000 for the Akron Zoological Park and \$248,000 for the Alaska Sea life Center in Seward, Alaska, for its Marine Ecosystems Education Pro-

gram.<sup>11</sup> Education earmarks divert scarce taxpayer resources to Members' pet projects, which they create outside of the traditional legislative process.

**Limited Flexibility and Bureaucracy.** One of the four pillars of the White House's original No Child Left Behind proposal was to reduce bureaucracy and increase flexibility: "Additional flexibility will be provided to states and school districts, and flexible funding will be increased at the local level."<sup>12</sup> The proposal called for a charter state option to allow states and districts with quality accountability systems to enter into performance agreements with the U.S. Secretary of Education. Under these agreements, states would be freed from categorical program requirements and could use funding on new state-directed initiatives.

However, this proposal to improve state-level autonomy and flexibility was not included in the No Child Left Behind Act that emerged from Congress. Instead, the law included a modest "ed-flex" provision to allow states to apply for the limited ability to redirect funding between existing federal programs.<sup>13</sup> This is very limited flexibility compared to the original state charter option that would have substantially altered the relationship between the states and the federal government.

### Restoring State and Local Control of Education

Senators DeMint and Cornyn and Representative Hoekstra have introduced similar versions of the A-PLUS Act in the Senate and House of Representatives. Both versions would fundamentally reform the relationship between the states and the federal

7. George W. Bush, "No Child Left Behind," The White House, February 2001, at [www.ed.gov/nclb/overview/intro/presidentplan/proposal.pdf](http://www.ed.gov/nclb/overview/intro/presidentplan/proposal.pdf) (June 12, 2007).

8. U.S. Department of Education, *Fiscal Year 2008 Budget Summary*, Section III, at [www.ed.gov/about/overview/budget/budget08/summary/edlite-section3.html](http://www.ed.gov/about/overview/budget/budget08/summary/edlite-section3.html) (June 12, 2007).

9. Krista Kafer, "Taking the Boy Crisis in Education Seriously: How School Choice Can Boost Achievement Among Boys and Girls," Independent Women's Forum *Position Paper* No. 604, April 2007, at [www.iwf.org/pdf/IWFPolicyPaper604\\_web.pdf](http://www.iwf.org/pdf/IWFPolicyPaper604_web.pdf) (June 12, 2007).

10. For an overview of federal earmarks in the Department of Education's budget, see Dan Lips, "End Wasteful Education Earmarks," Heritage Foundation *Education Notebook*, at [www.heritage.org/Research/Education/ednotes68.cfm](http://www.heritage.org/Research/Education/ednotes68.cfm) (June 12, 2007).

11. *Ibid.*

12. Bush, "No Child Left Behind."

13. Wayne Clifton Riddle, "K-12 Education: Special Forms of Flexibility in the Administration of Federal Aid Programs," Congressional Research Service *Report for Congress*, August 9, 2005.

government in K–12 education. Both versions would restore state and local control in education while maintaining the focus on improving academic achievement by protecting state-level academic standards and testing.

**The Senate Version.** The stated purpose of the Senate version of the Academic Partnerships Lead Us to Success Act (S. 893) is:

1. “To give States and local communities maximum freedom to determine how to boost academic achievement and implement education reforms.”
2. “To reduce the administrative costs and compliance burden of Federal education programs to focus Federal resources on improving academic achievement.”
3. “To ensure that States and communities are accountable to the public for advancing the academic achievement of all students, especially disadvantaged children.”<sup>14</sup>

Under this act, each state (and the District of Columbia and each U.S. territory) would have the opportunity to enter into a five-year performance agreement with the U.S. Secretary of Education. Under the terms of the performance agreement, the state would have the opportunity to be exempt from all federal program requirements under No Child Left Behind if it supplied certain information and maintained the terms of the agreement.

Specifically, the state would be required to identify which programs and funding streams it will consolidate and to outline how it will use the funds to further state education priorities, improve student achievement, and narrow achievement gaps. The performance agreement would require approval from two of three state authorities: the governor, the state legislature, and the state education agency. If these terms were met, the Secretary of Education would be required to approve the performance agreement.

In exchange for this freedom, states would be required to maintain state-level accountability systems, maintain the same academic achievement

goals and standards throughout the term of the agreement, and continue to report information about student achievement to parents and the public to maintain academic transparency. States would also be required to continue to disaggregate student testing data. These testing requirements would ensure that states continue to focus on improving academic achievement.

In addition, participating states would be required to continue improving educational opportunities for disadvantaged children and to meet all federal civil rights laws, as well as to maintain the equitable participation of private schools, maintain relative funding levels of at least 90 percent of the previous year’s, and limit funds allocated for administration.

If the state meets these terms, the Secretary of Education must continue the performance agreement. If the state does not, the secretary must inform the state and give it an opportunity to submit a revised performance agreement proposal. Once both sides enter into a performance agreement, states must submit annual reports to the Secretary of Education showing how the funds were used and showing the progress (or lack of progress) toward meeting the established goals. The secretary has the power to terminate the performance agreement if the state fails to comply with the agreement or misses its goals for three consecutive years.

**The House Version.** The purpose of the House version of the Academic Partnerships Lead Us to Success Act (H.R. 1539) is to give state and local communities the maximum freedom and flexibility to improve academic achievement and implement education reforms. The bill frees the state from the federal requirements that are often tied to federal education funding and allows the states to implement innovative initiatives to meet the unique needs of their students. By submitting a declaration of intent to the Secretary of Education, a state would be exempted from federal requirements and could use its federal funding for programs under Section 1001 of the Elementary and Secondary Education Act for any educational purpose allowed under state law.

14. Academic Partnerships Lead Us to Success Act, S. 893, 109th Cong., 1st Sess., Section 1(c), at <http://thomas.loc.gov/cgi-bin/query/z?c110:S.893>.

The declaration of intent must include a list of eligible programs to be included and a description of the plan for maintaining direct accountability to parents and other citizens of the state. The declaration must also include assurances that a designated state official submitted the declaration, the state will use fiscal controls, the state will comply with federal civil rights laws, and the state will seek to advance educational opportunities for the disadvantaged. The declaration of intent may last for no more than five years. The Secretary of Education must honor the declaration of intent within 60 days of receipt if it meets these requirements.

Under A-PLUS, a participating state must maintain transparency of public education. Participating states must “inform parents and the general public regardless of the student achievement system, demonstrating student progress relative to the State’s determination of student proficiency, for the purpose of public accountability to parents and taxpayers.” States have the freedom to determine their own accountability system.

Within one year, a participating state must widely disseminate—to parents and the general public—a report describing student performance, including disaggregated data (as required under current law) and a description of how the state used the funds to improve academic achievement, address the achievement gap, and improve educational opportunities for disadvantaged students. The legislation also requires the state to maintain funding levels of at least 90 percent of previous year funding, to limit the amount of funds spent on administration, and to ensure the equitable participation of private schools.

### The Benefits of the A-PLUS Act

While there are differences between the Senate and House versions of the A-PLUS Act, they share common benefits. Both versions would:

- **Return control of education policymaking authority to the state and local levels.** Both versions of the A-PLUS Act would allow states to take responsibility for education policymaking. Governors, state legislators, and state secretaries of education would make policy decisions about local schools, moving the decision-making process closer to school leaders, teachers, parents, and taxpayers. This would give states and local communities the opportunity to take full responsibility for improving educational opportunities in local schools. Citizens would no longer have to look to the federal government for solutions to improve America’s schools.
- **Free state and local governments from the administrative and compliance burden of federal education programs.** Because participating states could opt out of many federal program requirements, the A-PLUS Act would significantly reduce the federal administrative and compliance burden on states and local education agencies. Under the current system, scarce resources are expended just to complete the paperwork for federal programs. Under A-PLUS, this compliance burden would be lifted, freeing state leaders to redirect funds toward programs that more directly improve student learning.
- **Allow states to consolidate wasteful or inefficient programs.** A-PLUS would allow states to consolidate programs under the “performance agreement” or “declaration of intent.” This would enable state leaders to identify and eliminate ineffective programs. Policymakers have already identified a number of ineffective or unnecessary education programs in the U.S. Department of Education. A-PLUS would give states the opportunity to end these programs and redirect resources toward others that show greater promise.
- **Protect transparency and accountability for results.** Both versions of the A-PLUS Act would protect state-level testing, academic transparency, and accountability to the public. As noted, the current No Child Left Behind testing requirements have created a troublesome incentive for states to lower state standards to avoid federal sanctions. The A-PLUS Act would allow states to maintain state-level testing and information reporting to parents and the public. It also would ensure that states maintain transparency for results while allowing for greater state flexibility to design a testing system that serves local needs. States would have the freedom to implement new testing models without strict oversight from the federal government.

- **Restore federalism.** Giving states greater freedom to control funding and establish education policies would foster an education reform environment that is conducive to innovation, experimentation, and improvement. Many of the most promising education reforms have been implemented at the state level and have spread across the country with innovative states leading the way. The proliferation of charter schools, school vouchers, and education tax credits is one example of the innovative education reform ideas that have spread through federalism. The development and proliferation of state standards and testing policies in the 1990s is another. Allowing states to exercise greater control over education funds and to establish policies could well facilitate new improvements and innovations throughout the country.

## Conclusion

As Congress considers reauthorization of the No Child Left Behind Act of 2001, it should recognize the need for fundamental reform of federal K–12 education policy. Both versions of the A-PLUS Act would change the course of federal education policy, which since 1965 has followed a path of greater federal control of education, the proliferation of

bureaucracy, higher administrative costs, and new federal programs.

Rather than continuing to expand the federal government's role in education, the A-PLUS Act would return authority to the state level by allowing states to opt out of No Child Left Behind. States and local policymakers would have greater ability to use federal education funds on local priorities. States could end ineffective or inefficient federal programs and target resources toward more pressing needs. Fewer resources would be consumed by administrative costs and the level of bureaucracy needed to comply with existing federal rules and regulations. States, rather than the federal government, would direct state standards and assessments and maintain transparency for results through public reporting.

After more than four decades of unsuccessful federal intervention, it is time for Congress to consider a new approach. Returning greater authority to the states would empower parents, local school leaders, state policymakers, and governors to take responsibility for local schools and implement reforms to strengthen public education.

—Dan Lips is Education Analyst in the Domestic Policy Studies Department at The Heritage Foundation.