

form that may be used to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing, which shall be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary's designee) and such person may consult to arrange a suitable date and location where appropriate.

(3) Circumstances affecting penalty or order

In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the degree of culpability, and any demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C)¹ such other matters as justice may require.

(4) Modification

The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the Secretary or agreed upon in compromise, may be deducted from any sums that the United States or the agencies or instrumentalities of the United States owe to the person against whom the penalty is assessed.

(5) Petition for review

Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy of the petition to the Secretary or the Secretary's designee. The petition shall be filed within 30 days after the Secretary's assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

(6) Failure to comply

If a person fails to pay an assessment of a civil penalty or comply with an order, after the assessment or order, or both, are final under this section, or after a court has entered a final judgment under paragraph (5) in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at

prevailing rates from the day the assessment or order, or both, are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.

(Pub. L. 89-10, title IV, § 4303, as added Pub. L. 107-110, title IV, § 401, Jan. 8, 2002, 115 Stat. 1774.)

§ 7184. Preemption

Nothing in this part is intended to preempt any provision of law of a State or political subdivision of a State that is more restrictive than a provision of this part.

(Pub. L. 89-10, title IV, § 4304, as added Pub. L. 107-110, title IV, § 401, Jan. 8, 2002, 115 Stat. 1776.)

SUBCHAPTER V—PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS

CODIFICATION

Title V of the Elementary and Secondary Education Act of 1965, comprising this subchapter, was originally enacted as part of Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, amended, and subsequently revised, restated, and amended by other public laws. Title V is shown, herein, as having been added by Pub. L. 107-110, title V, § 501, Jan. 8, 2002, 115 Stat. 1776, without reference to earlier amendments because of the extensive revision of the title's provisions by Pub. L. 107-110. See Codification note preceding section 6301 of this title.

PART A—INNOVATIVE PROGRAMS

§ 7201. Purposes, State and local responsibility

(a) Purposes

The purposes of this part are the following:

(1) To support local education reform efforts that are consistent with and support statewide education reform efforts.

(2) To provide funding to enable State educational agencies and local educational agencies to implement promising educational reform programs and school improvement programs based on scientifically based research.

(3) To provide a continuing source of innovation and educational improvement, including support programs to provide library services and instructional and media materials.

(4) To meet the educational needs of all students, including at-risk youth.

(5) To develop and implement education programs to improve school, student, and teacher performance, including professional development activities and class size reduction programs.

(b) State and local responsibility

The State educational agency shall bear the basic responsibility for the administration of funds made available under this part, but it is the intent of Congress that the responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under this part be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel, because local educational agencies and individuals

¹ Opening parenthesis editorially supplied.

have the most direct contact with students and are most likely to be able to design programs to meet the educational needs of students in their own school districts.

(Pub. L. 89-10, title V, §5101, as added Pub. L. 107-110, title V, §501, Jan. 8, 2002, 115 Stat. 1776.)

PRIOR PROVISIONS

A prior section 7201, Pub. L. 89-10, title V, §5101, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3690, set forth findings relating to magnet schools assistance, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 7231 of this title.

A prior section 5101 of Pub. L. 89-10 was classified to section 3171 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

Prior sections 7202 to 7210 were omitted in the general amendment of this subchapter by Pub. L. 107-110.

Section 7202, Pub. L. 89-10, title V, §5102, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3691, related to purpose of magnet schools assistance. See section 7231 of this title.

A prior section 5102 of Pub. L. 89-10 was classified to section 3172 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

Section 7203, Pub. L. 89-10, title V, §5103, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3691, authorized program. See section 7231b of this title.

A prior section 5103 of Pub. L. 89-10 was classified to section 3173 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

Section 7204, Pub. L. 89-10, title V, §5104, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3691, defined "magnet school". See section 7231a of this title.

Section 7205, Pub. L. 89-10, title V, §5105, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3692, related to eligibility for assistance. See section 7231c of this title.

Section 7206, Pub. L. 89-10, title V, §5106, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3692, related to applications and requirements. See section 7231d of this title.

Section 7207, Pub. L. 89-10, title V, §5107, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3693, related to priority in approving applications. See section 7231e of this title.

Section 7208, Pub. L. 89-10, title V, §5108, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3693, related to use of funds. See section 7231f of this title.

Section 7209, Pub. L. 89-10, title V, §5109, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3694, set forth prohibitions. See section 7231g of this title.

Section 7210, Pub. L. 89-10, title V, §5110, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3694, related to limitations. See section 7231h of this title.

SUBPART 1—STATE AND LOCAL PROGRAMS

§ 7211. Allotment to States

(a) In general

From the sums appropriated to carry out this part for each fiscal year and not reserved under subsection (b) of this section, the Secretary shall allot, and make available in accordance with this part, to each State educational agency an amount that bears the same ratio to such sums as the school-age population of the State bears to the school-age population of all States, except that no State shall receive less than an amount equal to one-half of 1 percent of such sums.

(b) Reservation

From the sums appropriated to carry out this part for each fiscal year, the Secretary shall reserve not more than 1 percent for payments to

the outlying areas, to be allotted in accordance with their respective needs for assistance under this part.

(Pub. L. 89-10, title V, §5111, as added Pub. L. 107-110, title V, §501, Jan. 8, 2002, 115 Stat. 1777.)

PRIOR PROVISIONS

A prior section 7211, Pub. L. 89-10, title V, §5111, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3694, related to innovative programs, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 5111 of Pub. L. 89-10 was classified to section 3181 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

§ 7211a. Allocation to local educational agencies

(a) Distribution rule

(1) Allocation of base amounts

From the amount made available to a State educational agency under this part for a fiscal year, the State educational agency shall distribute, to local educational agencies within the State, an amount that is not less than 85 percent of the amount made available to the State educational agency under this part for fiscal year 2002, according to the relative enrollments in public and in private nonprofit schools within the jurisdictions of such local educational agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per-pupil allocations to local educational agencies that have the greatest numbers or percentages of children whose education imposes a higher-than-average cost per child, such as—

(A) children living in areas with high concentrations of economically disadvantaged families;

(B) children from economically disadvantaged families; and

(C) children living in sparsely populated areas.

(2) Allocation of increased amounts

From the amount made available to a State educational agency under this part for a fiscal year that exceeds the amount made available to the agency under this part for fiscal year 2002, the State educational agency shall distribute 100 percent (or, in the case of a State educational agency receiving a minimum allotment under section 7211(a) of this title, not less than 50 percent, notwithstanding subsection (b) of this section) to local educational agencies within the State, on the same basis as the State educational agency distributes amounts under paragraph (1).

(b) Limitations and requirements

Not more than 15 percent of funds made available under section 7211 of this title for State programs under this part for any fiscal year may be used for State administration under section 7213 of this title.

(c) Calculation of enrollments

(1) In general

The calculation of relative enrollments under subsection (a)(1) of this section shall be on the basis of the total of—

(A) the number of children enrolled in public schools; and