

(Pub. L. 89–10, title VI, §6132, as added Pub. L. 107–110, title VI, §601, Jan. 8, 2002, 115 Stat. 1878.)

§ 7311b. General provision

For purposes of this subpart, any State that is one local educational agency shall be considered a State educational agency and not a local educational agency.

(Pub. L. 89–10, title VI, §6133, as added Pub. L. 107–110, title VI, §601, Jan. 8, 2002, 115 Stat. 1878.)

PRIOR PROVISIONS

A prior section 7312, Pub. L. 89–10, title VI, §6102, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3708, which related to allocation to local educational agencies, was omitted in the general amendment of this subchapter by Pub. L. 107–110. See section 7211a of this title.

Division A—State Flexibility Authority

§ 7315. State flexibility

(a) Flexibility authority

Except as otherwise provided in this division, the Secretary shall, on a competitive basis, grant flexibility authority to not more than seven eligible State educational agencies, under which the agencies may consolidate and use funds in accordance with section 7315a of this title.

(b) Definitions

In this division:

(1) Eligible State educational agency

The term “eligible State educational agency” means a State educational agency that—

(A) submits an approvable application under subsection (c) of this section; and

(B) proposes performance agreements—

(i) that shall be entered into with not fewer than 4, and not more than 10, local educational agencies;

(ii) not fewer than half of which shall be entered into with high-poverty local educational agencies; and

(iii) that require the local educational agencies described in clause (i) to align their use of consolidated funds under section 7321a of this title with the State educational agency’s use of consolidated funds under section 7315a of this title.

(2) High-poverty local educational agency

The term “high-poverty local educational agency” means a local educational agency for which 20 percent or more of the children who are age 5 through 17, and served by the local educational agency, are from families with incomes below the poverty line.

(c) State applications

(1) Applications

To be eligible to receive flexibility authority under this division, a State educational agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

(A) information demonstrating, to the satisfaction of the Secretary, that the grant of authority offers substantial promise of—

(i) assisting the State educational agency in making adequate yearly progress, as defined under section 6311(b)(2) of this title; and

(ii) aligning State and local reforms and assisting the local educational agencies that enter into performance agreements with the State educational agency under paragraph (2) in making such adequate yearly progress;

(B) the performance agreements that the State educational agency proposes to enter into with eligible local educational agencies under paragraph (2);

(C) information demonstrating that the State educational agency has consulted with and involved parents, representatives of local educational agencies, and other educators in the development of the terms of the grant of authority;

(D) a provision specifying that the grant of flexibility authority shall be for a term of not more than 5 years;

(E) a list of the programs described in section 7315a(b) of this title that are included in the scope of the grant of authority;

(F) a provision specifying that no requirements of any program described in section 7315a(b) of this title and included by a State educational agency in the scope of the grant of authority shall apply to that agency, except as otherwise provided in this division;

(G) a 5-year plan describing how the State educational agency intends to consolidate and use the funds from programs included in the scope of the grant of authority, for any educational purpose authorized under this chapter, in order to make adequate yearly progress and advance the education priorities of the State and the local educational agencies with which the State educational agency enters into performance agreements;

(H) an assurance that the State educational agency will provide parents, teachers, and representatives of local educational agencies and schools with notice and an opportunity to comment on the proposed terms of the grant of authority;

(I) an assurance that the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the grant of authority;

(J) an assurance that the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, will meet the requirements of all applicable Federal civil rights laws in carrying out the grant of authority, including consolidating and using funds under the grant of authority;

(K) an assurance that, in consolidating and using funds under the grant of authority—

(i) the State educational agency, and the local educational agencies with which the State educational agency enters into per-

formance agreements, will provide for the equitable participation of students and professional staff in private schools consistent with section 7881 of this title; and (ii) that sections 7882, 7883, and 7884 of this title shall apply to all services and assistance provided with such funds in the same manner as such sections apply to services and assistance provided in accordance with section 7881 of this title;

(L) an assurance that the State educational agency will, for the duration of the grant of authority, use funds consolidated under section 7315a of this title only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds; and

(M) an assurance that the State educational agency shall, not later than 1 year after the date on which the Secretary makes the grant of authority, and annually thereafter during the term of the grant of authority, disseminate widely to parents and the general public, transmit to the Secretary, distribute to print and broadcast media, and post on the Internet, a report, which shall include a detailed description of how the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, used the funds consolidated under the grant of authority to make adequate yearly progress and advance the education priorities of the State and local educational agencies in the State.

(2) Proposed performance agreements with local educational agencies

(A) In general

A State educational agency that wishes to receive flexibility authority under this subpart shall propose performance agreements that meet the requirements of clauses (i) and (ii) of subsection (b)(1)(B) of this section (subject to approval of the application or amendment involved under subsection (d) or (e) of this section).

(B) Performance agreements

Each proposed performance agreement with a local educational agency shall—

(i) contain plans for the local educational agency to consolidate and use funds in accordance with section 7321a of this title, for activities that are aligned with the State educational agency's plan described in paragraph (1)(G);

(ii) be subject to the requirements of division B of this subpart relating to agreements between the Secretary and a local educational agency, except—

(I) that, as appropriate, references in that division to the Secretary shall be deemed to be references to the State educational agency; and

(II) as otherwise provided in this division; and

(iii) contain an assurance that the local educational agency will, for the duration

of the grant of authority, use funds consolidated under section 7321a of this title only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds.

(d) Approval and selection

The Secretary shall—

(1) establish a peer review process to assist in the review of proposed State applications under this section; and

(2) appoint individuals to participate in the peer review process who are—

(A) representative of parents, teachers, State educational agencies, and local educational agencies; and

(B) familiar with educational standards, assessments, accountability, curricula, instruction, and staff development, and other diverse educational needs of students.

(e) Amendment to grant of authority

(1) In general

Subject to paragraph (2), the Secretary shall amend the grant of flexibility authority made to a State educational agency under this division, in each of the following circumstances:

(A) Reduction in scope of the grant of authority

Not later than 1 year after receiving a grant of flexibility authority, the State educational agency seeks to amend the grant of authority to remove from the scope of the grant of authority any program described in section 7315a(b) of this title.

(B) Expansion of scope of the grant of authority

Not later than 1 year after receiving a grant of flexibility authority, the State educational agency seeks to amend the grant of authority to include in the scope of the grant of authority any additional program described in section 7315a(b) of this title or any additional achievement indicators for which the State will be held accountable.

(C) Changes with respect to number of performance agreements

The State educational agency seeks to amend the grant of authority to include or remove performance agreements that the State educational agency proposes to enter into with eligible local educational agencies, except that in no case may the State educational agency enter into performance agreements that do not meet the requirements of clauses (i) and (ii) of subsection (b)(1)(B) of this section.

(2) Approval and disapproval

(A) Deemed approval

A proposed amendment to a grant of flexibility authority submitted by a State educational agency pursuant to paragraph (1) shall be deemed to be approved by the Secretary unless the Secretary makes a written

determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the proposed amendment, that the proposed amendment is not in compliance with this division.

(B) Disapproval

The Secretary shall not finally disapprove the proposed amendment, except after giving the State educational agency notice and an opportunity for a hearing.

(C) Notification

If the Secretary finds that the proposed amendment is not in compliance, in whole or in part, with this division, the Secretary shall—

- (i) give the State educational agency notice and an opportunity for a hearing; and
- (ii) notify the State educational agency of the finding of noncompliance and, in such notification, shall—

(I) cite the specific provisions in the proposed amendment that are not in compliance; and

(II) request additional information, only as to the noncompliant provisions, needed to make the proposed amendment compliant.

(D) Response

If the State educational agency responds to the Secretary's notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, and resubmits the proposed amendment with the requested information described in subparagraph (C)(ii)(II), the Secretary shall approve or disapprove such proposed amendment prior to the later of—

- (i) the expiration of the 45-day period beginning on the date on which the proposed amendment is resubmitted; or
- (ii) the expiration of the 120-day period described in subparagraph (A).

(E) Failure to respond

If the State educational agency does not respond to the Secretary's notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, such proposed amendment shall be deemed to be disapproved.

(3) Treatment of program funds withdrawn from grant of authority

Beginning on the effective date of an amendment executed under paragraph (1)(A), each program requirement of each program removed from the scope of a grant of authority shall apply to the use of funds made available under the program by the State educational agency and each local educational agency with which the State educational agency has a performance agreement.

(Pub. L. 89–10, title VI, §6141, as added Pub. L. 107–110, title VI, §601, Jan. 8, 2002, 115 Stat. 1879.)

§ 7315a. Consolidation and use of funds

(a) In general

(1) Authority

Under a grant of flexibility authority made under this division, a State educational agency may consolidate Federal funds described in subsection (b) of this section and made available to the agency, and use such funds for any educational purpose authorized under this chapter.

(2) Program requirements

Except as otherwise provided in this division, a State educational agency may use funds under paragraph (1) notwithstanding the program requirements of the program under which the funds were made available to the State.

(b) Eligible funds and programs

(1) Funds

The funds described in this subsection are funds, for State-level activities and State administration, that are described in the following provisions:

(A) Section 6304 of this title.

(B) Paragraphs (4) and (5) of section 6362(d) of this title.

(C) Section 6613(a)(3) of this title.

(D) Section 6762(a)(1) of this title.

(E) Subsections (a) (with the agreement of the Governor), (b)(2), and (c)(1) of section 7112 of this title.

(F) Paragraphs (2) and (3) of section 7172(c) of this title.

(G) Section 7211a(b) of this title.

(2) Programs

The programs described in this subsection are the programs authorized to be carried out with funds described in paragraph (1).

(c) Special rule

A State educational agency that receives a grant of flexibility authority under this division—

(1) shall ensure that the funds described in section 7211a(a) of this title are allocated to local educational agencies in the State in accordance with section 7211a(a) of this title; but

(2) may specify how the local educational agencies shall use the allocated funds.

(Pub. L. 89–10, title VI, §6142, as added Pub. L. 107–110, title VI, §601, Jan. 8, 2002, 115 Stat. 1883.)

§ 7315b. Performance review and penalties

(a) Midterm review

(1) Failure to make adequate yearly progress

If, during the term of a grant of flexibility authority under this division, a State educational agency fails to make adequate yearly progress for 2 consecutive years, the Secretary shall, after providing notice and an opportunity for a hearing, terminate the grant of authority promptly.

(2) Noncompliance

The Secretary may, after providing notice and an opportunity for a hearing (including the opportunity to provide evidence as de-