

scribed in paragraph (3)), terminate a grant of flexibility authority for a State if there is evidence that the State educational agency involved has failed to comply with the terms of the grant of authority.

(3) Evidence

If a State educational agency believes that a determination of the Secretary under this subsection is in error for statistical or other substantive reasons, the State educational agency may provide supporting evidence to the Secretary, and the Secretary shall consider that evidence before making a final termination determination under this subsection.

(b) Final review

(1) In general

If, at the end of the 5-year term of a grant of flexibility authority made under this division, the State educational agency has not met the requirements described in section 7315(c) of this title, the Secretary may not renew the grant of flexibility authority under section 7315c of this title.

(2) Compliance

Beginning on the date on which such term ends, the State educational agency, and the local educational agencies with which the State educational agency has entered into performance agreements, shall be required to comply with each of the program requirements in effect on such date for each program that was included in the grant of authority.

(Pub. L. 89-10, title VI, §6143, as added Pub. L. 107-110, title VI, §601, Jan. 8, 2002, 115 Stat. 1883.)

§ 7315c. Renewal of grant of flexibility authority

(a) In general

Except as provided in section 7315b of this title and in accordance with this section, if a State educational agency has met, by the end of the original 5-year term of a grant of flexibility authority under this division, the requirements described in section 7315(c) of this title, the Secretary shall renew a grant of flexibility authority for one additional 5-year term.

(b) Renewal

The Secretary may not renew a grant of flexibility authority under this division unless, not later than 6 months before the end of the original term of the grant of authority, the State educational agency seeking the renewal notifies the Secretary, and the local educational agencies with which the State educational agency has entered into performance agreements, of the agency's intention to renew the grant of authority.

(c) Effective date

A renewal under this section shall be effective on the later of—

- (1) the expiration of the original term of the grant of authority; or
- (2) the date on which the State educational agency seeking the renewal provides to the Secretary all data required for the application described in section 7315(c) of this title.

(Pub. L. 89-10, title VI, §6144, as added Pub. L. 107-110, title VI, §601, Jan. 8, 2002, 115 Stat. 1884.)

Division B—Local Flexibility Demonstration

§ 7321. Local flexibility demonstration agreements

(a) Authority

Except as otherwise provided in this division, the Secretary shall, on a competitive basis, enter into local flexibility demonstration agreements—

- (1) with local educational agencies that submit approvable proposed agreements under subsection (c) of this section and that are selected under subsection (b) of this section; and
- (2) under which those agencies may consolidate and use funds in accordance with section 7321a of this title.

(b) Selection of local educational agencies

(1) In general

Subject to paragraph (2), the Secretary shall enter into local flexibility demonstration agreements under this division with not more than 80 local educational agencies. Each local educational agency shall be selected on a competitive basis from among those local educational agencies that—

(A) submit a proposed local flexibility demonstration agreement under subsection (c) of this section to the Secretary and demonstrate, to the satisfaction of the Secretary, that the agreement—

(i) has a substantial promise of assisting the local educational agency in meeting the State's definition of adequate yearly progress, advancing the education priorities of the local educational agency, meeting the general purposes of the programs included under this division and the purposes of this part, improving student achievement, and narrowing achievement gaps in accordance with section 6311(b) of this title;

(ii) meets the requirements of this division; and

(iii) contains a plan to consolidate and use funds in accordance with section 7321a of this title in order to meet the State's definition of adequate yearly progress and the local educational agency's specific, measurable goals for improving student achievement and narrowing achievement gaps; and

(B) have consulted and involved parents and other educators in the development of the proposed local flexibility demonstration agreement.

(2) Geographic distribution

(A) Initial agreements

The Secretary may enter into not more than three local flexibility demonstration agreements under this division with local educational agencies in each State that does not have a grant of flexibility authority under division A of this subpart.

(B) Urban and rural areas

If more than three local educational agencies in a State submit approvable local flexibility demonstration agreements under this

division, the Secretary shall select local educational agencies with which to enter into such agreements in a manner that ensures an equitable distribution among such agencies serving urban and rural areas.

(C) Priority of States to enter into State flexibility demonstration agreements

Notwithstanding any other provision of this part, a local educational agency may not seek to enter into a local flexibility demonstration agreement under this division if that agency is located in a State for which the State educational agency—

(i) has, not later than 4 months after January 8, 2002, notified the Secretary of its intent to apply for a grant of flexibility authority under division A of this subpart and, within such period of time as the Secretary may establish, is provided with such authority by the Secretary; or

(ii) has, at any time after such period, been granted flexibility authority under division A of this subpart.

(c) Required terms of local flexibility demonstration agreement

Each local flexibility demonstration agreement entered into with the Secretary under this division shall contain each of the following terms:

(1) Duration

The local flexibility demonstration agreement shall be for a term of 5 years.

(2) Application of program requirements

The local flexibility demonstration agreement shall provide that no requirements of any program described in section 7321a of this title and included by a local educational agency in the scope of its agreement shall apply to that agency, except as otherwise provided in this division.

(3) List of programs

The local flexibility demonstration agreement shall list which of the programs described in section 7321a of this title are included in the scope of the agreement.

(4) Use of funds to improve student achievement

The local flexibility demonstration agreement shall contain a 5-year plan describing how the local educational agency intends to consolidate and use the funds from programs included in the scope of the agreement for any educational purpose authorized under this chapter to advance the education priorities of the local educational agency, meet the general purposes of the included programs, improve student achievement, and narrow achievement gaps in accordance with section 6311(b) of this title.

(5) Local input

The local flexibility demonstration agreement shall contain an assurance that the local educational agency will provide parents, teachers, and representatives of schools with notice and an opportunity to comment on the proposed terms of the local flexibility demonstration agreement.

(6) Fiscal responsibilities

The local flexibility demonstration agreement shall contain an assurance that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the agreement.

(7) Civil rights

The local flexibility demonstration agreement shall contain an assurance that the local educational agency will meet the requirements of all applicable Federal civil rights laws in carrying out the agreement and in consolidating and using the funds under the agreement.

(8) Private school participation

The local flexibility demonstration agreement shall contain an assurance that the local educational agency agrees that in consolidating and using funds under the agreement—

(A) the local educational agency, will provide for the equitable participation of students and professional staff in private schools consistent with section 7881 of this title; and

(B) 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.

(9) Supplanting

The local flexibility demonstration agreement shall 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.

(10) Annual reports

The local flexibility demonstration agreement shall contain an assurance that the local educational agency shall, not later than 1 year after the date on which the Secretary enters into the agreement, and annually thereafter during the term of the agreement, disseminate widely to parents and the general public, transmit to the Secretary, and the State educational agency for the State in which the local educational agency is located, distribute to print and broadcast media, and post on the Internet, a report that includes a detailed description of how the local educational agency used the funds consolidated under the agreement to improve student academic achievement and reduce achievement gaps.

(d) Peer review

The Secretary shall—

(1) establish a peer review process to assist in the review of proposed local flexibility demonstration agreements under this division; and

(2) appoint individuals to the peer review process who are representative of parents,

teachers, State educational agencies, and local educational agencies, and who are familiar with educational standards, assessments, accountability, curriculum, instruction and staff development, and other diverse educational needs of students.

(e) Amendment to performance agreement

(1) In general

In each of the following circumstances, the Secretary shall amend a local flexibility demonstration agreement entered into with a local educational agency under this division:

(A) Reduction in scope of local flexibility demonstration agreement

Not later than 1 year after entering into a local flexibility demonstration agreement, the local educational agency seeks to amend the agreement to remove from the scope any program described in section 7321a of this title.

(B) Expansion of scope of local flexibility demonstration agreement

Not later than 1 year after entering into the local flexibility demonstration agreement, a local educational agency seeks to amend the agreement to include in its scope any additional program described in section 7321a of this title¹ or any additional achievement indicators for which the local educational agency will be held accountable.

(2) Approval and disapproval

(A) Deemed approval

A proposed amendment to a local flexibility demonstration agreement 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 local 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 local educational agency notice and an opportunity for a hearing; and
- (ii) notify the local 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 local 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 local 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 agreement

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 local flexibility demonstration agreement shall apply to the use of funds made available under the program by the local educational agency.

(Pub. L. 89-10, title VI, §6151, as added Pub. L. 107-110, title VI, §601, Jan. 8, 2002, 115 Stat. 1884.)

REFERENCES IN TEXT

Section 7321a of this title, referred to in subsec. (e)(1)(B), was in the original "section 6251", meaning section 6251 of Pub. L. 89-10, which was translated as reading section 6152 of that Act to reflect the probable intent of Congress, because that Act does not contain a section 6251, and section 6152 of that Act describes programs.

§ 7321a. Consolidation and use of funds

(a) In general

(1) Authority

Under a local flexibility demonstration agreement entered into under this division, a local educational agency may consolidate Federal funds made available to the agency under the provisions listed in subsection (b) of this section and use such funds for any educational purpose permitted under this chapter.

(2) Program requirements

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

(b) Eligible programs

Program funds made available to local educational agencies on the basis of a formula under the following provisions may be consolidated and used under subsection (a) of this section:

¹ See References in Text note below.