

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 title<sup>1</sup> 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:

<sup>1</sup> See References in Text note below.

(1) Subpart 2 of part A of subchapter II of this chapter.

(2) Subpart 1 of part D of subchapter II of this chapter.

(3) Subpart 1 of part A of subchapter IV of this chapter.

(4) Subpart 1 of part A of subchapter V of this chapter.

(Pub. L. 89-10, title VI, §6152, as added Pub. L. 107-110, title VI, §601, Jan. 8, 2002, 115 Stat. 1888.)

**§ 7321b. Limitations on administrative expenditures**

Each local educational agency that has entered into a local flexibility demonstration agreement with the Secretary under this division may use for administrative purposes not more than 4 percent of the total amount of funds allocated to the agency under the programs included in the scope of the agreement.

(Pub. L. 89-10, title VI, §6153, as added Pub. L. 107-110, title VI, §601, Jan. 8, 2002, 115 Stat. 1889.)

**§ 7321c. Performance review and penalties**

**(a) Midterm review**

**(1) Failure to make adequate yearly progress**

If, during the term of a local flexibility demonstration agreement, a local educational agency fails to make adequate yearly progress for 2 consecutive years, the Secretary shall, after notice and opportunity for a hearing, promptly terminate the agreement.

**(2) Noncompliance**

The Secretary may, after providing notice and an opportunity for a hearing (including the opportunity to provide information as provided for in paragraph (3)), terminate a local flexibility demonstration agreement under this division if there is evidence that the local educational agency has failed to comply with the terms of the agreement.

**(3) Evidence**

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

**(b) Final review**

If, at the end of the 5-year term of a local flexibility demonstration agreement entered into under this division, the local educational agency has not met the requirements described in section 7321(c) of this title, the Secretary may not renew the agreement under section 7321d of this title and, beginning on the date on which such term ends, the local educational agency shall be required to comply with each of the program requirements in effect on such date for each program included in the local flexibility demonstration agreement.

(Pub. L. 89-10, title VI, §6154, as added Pub. L. 107-110, title VI, §601, Jan. 8, 2002, 115 Stat. 1889.)

**§ 7321d. Renewal of local flexibility demonstration agreement**

**(a) In general**

Except as provided in section 7321c of this title and in accordance with this section, the Secretary shall renew for one additional 5-year term a local flexibility demonstration agreement entered into under this division if the local educational agency has met, by the end of the original term of the agreement, the requirements described in section 7321(c) of this title.

**(b) Notification**

The Secretary may not renew a local flexibility demonstration agreement under this division unless, not less than 6 months before the end of the original term of the agreement, the local educational agency seeking the renewal notifies the Secretary of its intention to renew.

**(c) Effective date**

A renewal under this section shall be effective at the end of the original term of the agreement or on the date on which the local educational agency seeking renewal provides to the Secretary all data required under the agreement, whichever is later.

(Pub. L. 89-10, title VI, §6155, as added Pub. L. 107-110, title VI, §601, Jan. 8, 2002, 115 Stat. 1889.)

**§ 7321e. Reports**

**(a) Transmittal to Congress**

Not later than 60 days after the Secretary receives a report described in section 7321(b)(10)<sup>1</sup> of this title, the Secretary shall make the report available to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

**(b) Limitation**

A State in which a local educational agency that has a local flexibility demonstration agreement is located may not require such local educational agency to provide any application information with respect to the programs included within the scope of that agreement other than that information that is required to be included in the report described in section 7321(b)(10)<sup>1</sup> of this title.

(Pub. L. 89-10, title VI, §6156, as added Pub. L. 107-110, title VI, §601, Jan. 8, 2002, 115 Stat. 1890.)

SUBPART 4—STATE ACCOUNTABILITY FOR ADEQUATE YEARLY PROGRESS

**§ 7325. Accountability for adequate yearly progress**

In the case of a State educational agency that has a plan approved under subpart 1 of part A of subchapter I of this chapter after January 8, 2002, and has a plan approved under subpart 1 of part A of subchapter III of this chapter after January 8, 2002, the Secretary shall annually, starting with the beginning of the first school year following the first two school years for which such plans were implemented, review whether the State has—

<sup>1</sup> So in original. Probably should be section "7321(c)(10)".