

waiver is not contributing to the progress of schools described in subsection (e)(1); or

(B) determines that the waiver is no longer necessary to achieve its original purposes.

**(g) Publication**

A notice of the Secretary's decision to grant each waiver under subsection (a) of this section shall be published in the Federal Register and the Secretary shall provide for the dissemination of the notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.

(Pub. L. 89-10, title VIII, §8401, formerly title IX, §9401, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1972; renumbered title VIII, §8401, and amended Pub. L. 114-95, title VIII, §§8001(a)(4), 8013, Dec. 10, 2015, 129 Stat. 2088, 2089, 2103.)

**PRIOR PROVISIONS**

A prior section 7861, Pub. L. 89-10, title IX, §9141, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3792, related to national activities, prior to the general amendment of former subchapter IX of this chapter by Pub. L. 107-110.

**AMENDMENTS**

2015—Subsec. (a). Pub. L. 114-95, §8013(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "Except as provided in subsection (c) of this section, the Secretary may waive any statutory or regulatory requirement of this chapter for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that—

"(1) receives funds under a program authorized by this chapter; and

"(2) requests a waiver under subsection (b) of this section."

Subsec. (b)(1). Pub. L. 114-95, §8013(2)(A)(i), in introductory provisions, substituted "acting on its own behalf or on behalf of a local educational agency in accordance with subsection (a)(2)," for "local educational agency," and inserted ", which shall include a plan" after "to the Secretary".

Subsec. (b)(1)(B) to (E). Pub. L. 114-95, §8013(2)(A)(iii), added subpars. (B) to (E) and struck out former subpars. (B) to (D) which required a waiver request to contain a description of the Federal statutory or regulatory requirements to be waived, a description of the measurable educational goals for each school year affected by the waiver, and an explanation of how the waiver would provide assistance. Former subpar. (E) redesignated (F).

Subsec. (b)(1)(F). Pub. L. 114-95, §8013(2)(A)(ii), (iv), redesignated subpar. (E) as (F) and inserted "and, if the waiver relates to provisions of subsections (b) or (h) of section 6311 of this title, describes how the State educational agency, local educational agency, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 6311(b)(2)(B)(xi) of this title" after "waivers are requested".

Subsec. (b)(2)(B)(i)(II). Pub. L. 114-95, §8013(2)(B), substituted "(on behalf of those agencies or on behalf of, and based on the requests of, local educational agencies in the State)" for "(on behalf of, and based on the requests of, local educational agencies)".

Subsec. (b)(3)(A). Pub. L. 114-95, §8013(2)(C)(i), inserted "or on behalf of local educational agencies in the State under subsection (a)(2)," after "acting on its own behalf," in introductory provisions, added cls. (i) to (iii), and struck out former cls. (i) to (iii) which read as follows:

"(i) provide all interested local educational agencies in the State with notice and a reasonable opportunity to comment on the request;

"(ii) submit the comments to the Secretary; and

"(iii) provide notice and information to the public regarding the waiver request in the manner in which the applying agency customarily provides similar notices and information to the public."

Subsec. (b)(3)(B). Pub. L. 114-95, §8013(2)(C)(ii), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

"(i) the request shall be reviewed by the State educational agency and be accompanied by the comments, if any, of the State educational agency; and

"(ii) notice and information regarding the waiver request shall be provided to the public by the agency requesting the waiver in the manner in which that agency customarily provides similar notices and information to the public."

Subsec. (b)(4). Pub. L. 114-95, §8013(2)(D), added par. (4).

Subsec. (c)(1). Pub. L. 114-95, §8013(3)(A), inserted ", Indian tribes" after "local educational agencies".

Subsec. (c)(8). Pub. L. 114-95, §8013(3)(B), substituted "part C of subchapter IV" for "subpart 1 of part B of subchapter V".

Subsec. (c)(9). Pub. L. 114-95, §8013(3)(C), added par. (9) and struck out former par. (9) which read as follows: "the prohibitions regarding—

"(A) State aid in section 7902 of this title;

"(B) use of funds for religious worship or instruction in section 7885 of this title; and

"(C) activities in section 7906 of this title; or"

Subsec. (d). Pub. L. 114-95, §8013(4)(A), inserted "; limitations" after "waiver" in heading.

Subsec. (d)(2). Pub. L. 114-95, §8013(4)(B), substituted "State demonstrates" for "Secretary determines" in introductory provisions.

Subsec. (d)(3). Pub. L. 114-95, §8013(4)(C), added par. (3).

Subsec. (e). Pub. L. 114-95, §8013(5), added subsec. (e) and struck out former subsec. (e) which required certain reports to State educational agencies, the Secretary, and Congress concerning waivers under this section.

Subsec. (f). Pub. L. 114-95, §8013(6), substituted "if, after notice and an opportunity for a hearing, the Secretary—" for "if the Secretary determines, after notice and an opportunity for a hearing, that the performance of the State or other recipient affected by the waiver has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purposes." and added pars. (A) and (B).

**EFFECTIVE DATE OF 2015 AMENDMENT**

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

**PART E—APPROVAL AND DISAPPROVAL OF STATE PLANS AND LOCAL APPLICATIONS**

**§ 7871. Approval and disapproval of State plans**

**(a) Approval**

A plan submitted by a State pursuant to section 6611(d), 7113(c), 7173, or 7842 of this title shall be approved by the Secretary unless the Secretary makes a written determination (which shall include the supporting information and rationale supporting such determination), prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan is not in compliance with section 6611(d), 7113(c), or 7173 of this title, or part C, respectively.

**(b) Disapproval process****(1) In general**

The Secretary shall not finally disapprove a plan submitted under section 6611(d), 7113(c), 7173, or 7842 of this title, except after giving the State educational agency notice and an opportunity for a hearing.

**(2) Notifications**

If the Secretary finds that the plan is not in compliance, in whole or in part, with section 6611(d), 7113(c), or 7173 of this title, or part C, as applicable, the Secretary shall—

(A) immediately notify the State of such determination;

(B) provide a detailed description of the specific provisions of the plan that the Secretary determines fail to meet the requirements, in whole or in part, of such section or part, as applicable;

(C) offer the State an opportunity to revise and resubmit its plan within 45 days of such determination, including the chance for the State to present supporting information to clearly demonstrate that the State plan meets the requirements of such section or part, as applicable;

(D) provide technical assistance, upon request of the State, in order to assist the State to meet the requirements of such section or part, as applicable;

(E) conduct a hearing within 30 days of the plan's resubmission under subparagraph (C), unless a State declines the opportunity for such hearing; and

(F) request additional information, only as to the noncompliant provisions, needed to make the plan compliant.

**(3) Response**

If the State educational agency responds to the Secretary's notification described in paragraph (2)(A) prior to the expiration of the 45-day period beginning on the date on which the State educational agency received the notification, and resubmits the plan as described in paragraph (2)(C), the Secretary shall approve such plan unless the Secretary determines the plan does not meet the requirements of section 6611(d), 7113(c), or 7173 of this title, or part C, as applicable.

**(4) Failure to respond**

If the State educational agency does not respond to the Secretary's notification described in paragraph (2)(A) prior to the expiration of the 45-day period beginning on the date on which the State educational agency received the notification, such plan shall be deemed to be disapproved.

**(c) Limitation**

A plan submitted under section 6611(d), 7113(c), 7173, or 7842 of this title shall not be approved or disapproved based upon the nature of the activities proposed within such plan if such proposed activities meet the applicable program requirements.

**(d) Peer-review requirements**

Notwithstanding any other requirements of this part, the Secretary shall ensure that any

portion of a consolidated State plan that is related to part A of subchapter I is subject to the peer-review process described in section 6311(a)(4) of this title.

(Pub. L. 89-10, title VIII, §8451, as added Pub. L. 114-95, title VIII, §8014, Dec. 10, 2015, 129 Stat. 2107.)

## PRIOR PROVISIONS

A prior section 7871, Pub. L. 89-10, title IX, §9151, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3792, established the National Advisory Council on Indian Education, prior to the general amendment of former subchapter IX of this chapter by Pub. L. 107-110.

## EFFECTIVE DATE

Section effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as an Effective Date of 2015 Amendment note under section 6301 of this title.

**§ 7872. Approval and disapproval of local educational agency applications****(a) Approval**

An application submitted by a local educational agency pursuant to section 6612(b), 7116, 7174(b) or 7845 of this title, shall be approved by the State educational agency unless the State educational agency makes a written determination (which shall include the supporting information and rationale for such determination), prior to the expiration of the 120-day period beginning on the date on which the State educational agency received the application, that the application is not in compliance with section 6612(b), 7116, or 7174(b) of this title, or part C, respectively.

**(b) Disapproval process****(1) In general**

The State educational agency shall not finally disapprove an application submitted under section 6612(b), 7116, 7174(b) or 7845 of this title except after giving the local educational agency notice and opportunity for a hearing.

**(2) Notifications**

If the State educational agency finds that the application submitted under section 6612(b), 7116, 7174(b) or 7845 of this title is not in compliance, in whole or in part, with section 6612(b), 7116, or 7174(b) of this title, or part C, respectively, the State educational agency shall—

(A) immediately notify the local educational agency of such determination;

(B) provide a detailed description of the specific provisions of the application that the State determines fail to meet the requirements, in whole or in part, of such section or part, as applicable;

(C) offer the local educational agency an opportunity to revise and resubmit its application within 45 days of such determination, including the chance for the local educational agency to present supporting information to clearly demonstrate that the application meets the requirements of such section or part;