

grams and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

§ 6472. Definitions

In this part:

(1) Adult correctional institution

The term “adult correctional institution” means a facility in which persons (including persons under 21 years of age) are confined as a result of a conviction for a criminal offense.

(2) At-risk

The term “at-risk”, when used with respect to a child, youth, or student, means a school aged individual who is at-risk of academic failure, dependency adjudication, or delinquency adjudication, has a drug or alcohol problem, is pregnant or is a parent, has come into contact with the juvenile justice system or child welfare system in the past, is at least 1 year behind the expected grade level for the age of the individual, is an English learner, is a gang member, has dropped out of school in the past, or has a high absenteeism rate at school.

(3) Community day program

The term “community day program” means a regular program of instruction provided by a State agency at a community day school operated specifically for neglected or delinquent children and youth.

(4) Institution for neglected or delinquent children and youth

The term “institution for neglected or delinquent children and youth” means—

(A) a public or private residential facility, other than a foster home, that is operated for the care of children who have been committed to the institution or voluntarily placed in the institution under applicable State law, due to abandonment, neglect, or death of their parents or guardians; or

(B) a public or private residential facility for the care of children who have been adjudicated to be delinquent or in need of supervision.

(Pub. L. 89-10, title I, §1432, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1591; amended Pub. L. 114-95, title I, §1401(15), Dec. 10, 2015, 129 Stat. 1905.)

PRIOR PROVISIONS

A prior section 6472, Pub. L. 89-10, title I, §1432, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3601, defined terms for this part, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 1432 of Pub. L. 89-10 was classified to section 2832 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

AMENDMENTS

2015—Par. (2). Pub. L. 114-95 inserted “dependency adjudication, or delinquency adjudication,” after “failure,” inserted “or child welfare system” after “juvenile justice system”, and substituted “is an English learner” for “has limited English proficiency”.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive pro-

grams and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

PART E—FLEXIBILITY FOR EQUITABLE PER-PUPIL FUNDING

PRIOR PROVISIONS

A prior part E, consisting of sections 6491 to 6494, related to national assessment of subchapter I, prior to repeal by Pub. L. 114-95, title I, §1501(a)(1), Dec. 10, 2015, 129 Stat. 1905.

§ 6491. Flexibility for equitable per-pupil funding

(a) Purpose

The purpose of the program under this section is to provide local educational agencies with flexibility to consolidate eligible Federal funds and State and local education funding in order to create a single school funding system based on weighted per-pupil allocations for low-income and otherwise disadvantaged students.

(b) Authority

(1) In general

The Secretary is authorized to enter into local flexibility demonstration agreements—

(A) for not more than 3 years with local educational agencies that are selected under subsection (c) and submit proposed agreements that meet the requirements of subsection (d); and

(B) under which such agencies may consolidate and use funds in accordance with subsection (d) in order to develop and implement a school funding system based on weighted per-pupil allocations for low-income and otherwise disadvantaged students.

(2) Flexibility

Except as described in subsection (d)(1)(I), the Secretary is authorized to waive, for local educational agencies entering into agreements under this section, any provision of this chapter that would otherwise prevent such agency from using eligible Federal funds as part of such agreement.

(c) Selection of local educational agencies

(1) In general

The Secretary may enter into local flexibility demonstration agreements with not more than 50 local educational agencies with an approved application under subsection (d).

(2) Selection

Each local educational agency shall be selected based on such agency—

(A) submitting a proposed local flexibility demonstration agreement under subsection (d);

(B) demonstrating that the agreement meets the requirements of such subsection; and

(C) agreeing to meet the continued demonstration requirements under subsection (e).

(3) Expansion

Beginning with the 2019-2020 academic year, the Secretary may extend funding flexibility authorized under this section to any local edu-

cational agency that submits and has approved an application under subsection (d), as long as a significant majority of the demonstration agreements with local educational agencies described in paragraph (1) meet the requirements of subsection (d)(2) and subsection (e)(1) as of the end of the 2018–2019 academic year.

(d) Required terms of local flexibility demonstration agreement

(1) Application

Each local educational agency that desires to participate in the program under this section shall submit, at such time and in such form as the Secretary may prescribe, an application to enter into a local flexibility demonstration agreement with the Secretary in order to develop and implement a school funding system based on weighted per-pupil allocations that meets the requirements of this section. The application shall include—

(A) a description of the school funding system based on weighted per-pupil allocations, including—

(i) the weights used to allocate funds within such system;

(ii) the local educational agency's legal authority to use State and local education funds consistent with this section;

(iii) how such system will meet the requirements of paragraph (2); and

(iv) how such system will support the academic achievement of students, including low-income students, the lowest-achieving students, English learners, and children with disabilities;

(B) a list of funding sources, including eligible Federal funds, the local educational agency will include in such system;

(C) a description of the amount and percentage of total local educational agency funding, including State and local education funds and eligible Federal funds, that will be allocated through such system;

(D) the per-pupil expenditures (which shall include actual personnel expenditures, including staff salary differentials for years of employment, and actual nonpersonnel expenditures) of State and local education funds for each school served by the agency for the preceding fiscal year;

(E) the per-pupil amount of eligible Federal funds each school served by the agency received in the preceding fiscal year, disaggregated by the programs supported by the eligible Federal funds;

(F) a description of how such system will ensure that any eligible Federal funds allocated through the system will meet the purposes of each Federal program supported by such funds, including serving students from low-income families, English learners, migratory children, and children who are neglected, delinquent, or at risk, as applicable;

(G) an assurance that the local educational agency developed and will implement the local flexibility demonstration agreement in consultation with teachers, principals, other school leaders (including charter school leaders in a local educational

agency that has charter schools), administrators of Federal programs impacted by the agreement, parents, community leaders, and other relevant stakeholders;

(H) an assurance that the local educational agency will use fiscal control and sound accounting procedures that ensure proper disbursement of, and accounting for, eligible Federal funds consolidated and used under such system;

(I) an assurance that the local educational agency will continue to meet the requirements of sections 6320, 6321, and 7881 of this title; and

(J) 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 funds under the agreement.

(2) Requirements of the system

(A) In general

A local educational agency's school funding system based on weighted per-pupil allocations shall—

(i) except as allowed under clause (iv), allocate a significant portion of funds, including State and local education funds and eligible Federal funds, to the school level based on the number of students in a school and a formula developed by the agency under this section that determines per-pupil weighted amounts;

(ii) use weights or allocation amounts that allocate substantially more funding to English learners, students from low-income families, and students with any other characteristics associated with educational disadvantage chosen by the local educational agency, than to other students;

(iii) ensure that each high-poverty school receives, in the first year of the demonstration agreement—

(I) more per-pupil funding, including from Federal, State, and local sources, for low-income students than such funding received for low-income students in the year prior to entering into a demonstration agreement under this section; and

(II) at least as much per-pupil funding, including from Federal, State, and local sources, for English learners as such funding received for English learners in the year prior to entering into a demonstration agreement under this section;

(iv) be used to allocate to schools a significant percentage, which shall be a percentage agreed upon during the application process, of all the local educational agency's State and local education funds and eligible Federal funds; and

(v) include all school-level actual personnel expenditures for instructional staff (including staff salary differentials for years of employment) and actual nonpersonnel expenditures in the calculation of the local educational agency's State and local education funds and eligible Federal funds to be allocated under clause (i).

(B) Percentage

In establishing the percentage described in subparagraph (A)(iv) for the system, the local educational agency shall demonstrate that the percentage—

(i) under such subparagraph is sufficient to carry out the purposes of the demonstration agreement under this section and to meet each of the requirements of this subsection; and

(ii) of State and local education funds and eligible Federal funds that are not allocated through the local educational agency's school funding system based on weighted per-pupil allocations, does not undermine or conflict with the requirements of the demonstration agreement under this section.

(C) Expenditures

After allocating funds through the system, the local educational agency shall charge schools for the per-pupil expenditures of State and local education funds and eligible Federal funds, including actual personnel expenditures (including staff salary differentials for years of employment) for instructional staff and actual nonpersonnel expenditures.

(e) Continued demonstration

Each local educational agency with an approved application under subsection (d) shall annually—

(1) demonstrate to the Secretary that, as compared to the previous year, no high-poverty school served by the agency received—

(A) less per-pupil funding, including from Federal, State, and local sources, for low-income students; or

(B) less per-pupil funding, including from Federal, State, and local sources, for English learners;

(2) make public and report to the Secretary the per-pupil expenditures (including actual personnel expenditures that include staff salary differentials for years of employment, and actual non-personnel expenditures) of State and local education funds and eligible Federal funds for each school served by the agency, disaggregated by each quartile of students attending the school based on student level of poverty and by each major racial or ethnic group in the school, for the preceding fiscal year;

(3) make public the total number of students enrolled in each school served by the agency and the number of students enrolled in each such school disaggregated by each of the subgroups of students, as defined in section 6311(c)(2) of this title; and

(4) notwithstanding paragraph (1), (2), or (3), ensure that any information to be reported or made public under this subsection is only reported or made public if such information does not reveal personally identifiable information.

(f) Limitations on administrative expenditures

Each local educational agency that has entered into a local flexibility demonstration agreement with the Secretary under this section

may use, for administrative purposes, an amount of eligible Federal funds that is not more than the percentage of funds allowed for such purposes under any of the following:

- (1) This subchapter.
- (2) Subchapter II.
- (3) Subchapter III.
- (4) Part A of subchapter IV.
- (5) Part B of subchapter V.

(g) Peer review

The Secretary may establish a peer-review process to assist in the review of a proposed local flexibility demonstration agreement.

(h) Noncompliance

The Secretary may, after providing notice and an opportunity for a hearing (including the opportunity to provide supporting evidence as provided for in subsection (i)), terminate a local flexibility demonstration agreement under this section if there is evidence that the local educational agency has failed to comply with the terms of the agreement and the requirements under subsections (d) and (e).

(i) Evidence

If a local educational agency believes that the Secretary's determination under subsection (h) 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 determination.

(j) Program evaluation

From the amount reserved for evaluation activities under section 7981 of this title, the Secretary, acting through the Director of the Institute of Education Sciences, shall, in consultation with the relevant program office at the Department, evaluate—

(1) the implementation of the local flexibility demonstration agreements under this section; and

(2) the impact of such agreements on improving the equitable distribution of State and local funding and increasing student achievement.

(k) Renewal of local flexibility demonstration agreement

The Secretary may renew for additional 3-year terms a local flexibility demonstration agreement under this section if—

(1) the local educational agency has met the requirements under subsections (d)(2) and (e) and agrees to, and has a high likelihood of, continuing to meet such requirements; and

(2) the Secretary determines that renewing the local flexibility demonstration agreement is in the interest of students served under this subchapter and subchapter III.

(l) Definitions

In this section:

(1) Eligible Federal funds

The term "eligible Federal funds" means funds received by a local educational agency under—

- (A) this subchapter;
- (B) subchapter II;

- (C) subchapter III;
- (D) part A of subchapter IV; and
- (E) part B of subchapter V.

(2) High-poverty school

The term “high-poverty school” means a school that is in the highest 2 quartiles of schools served by a local educational agency, based on the percentage of enrolled students from low-income families.

(Pub. L. 89-10, title I, §1501, as added Pub. L. 114-95, title I, §1501(b), Dec. 10, 2015, 129 Stat. 1906.)

PRIOR PROVISIONS

Prior sections 6491 to 6494, 6511 to 6518, 6531 to 6537, 6551 to 6553, 6555, and 6561 to 6561i were repealed by Pub. L. 114-95, §5, title I, §1501(a)(1), Dec. 10, 2015, 129 Stat. 1806, 1905, effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs.

Section 6491, Pub. L. 89-10, title I, §1501, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1592; amended Pub. L. 107-279, title IV, §404(d)(4), Nov. 5, 2002, 116 Stat. 1986, related to evaluations. See section 7981 of this title.

Another prior section 6491, Pub. L. 89-10, title I, §1501, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3601; amended Pub. L. 104-134, title I, §101(d) [title VII, §703(b)(3)], Apr. 26, 1996, 110 Stat. 1321-211, 1321-255; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105-18, title VI, §60002, June 12, 1997, 111 Stat. 214, related to evaluations, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 1501 of Pub. L. 89-10 was classified to section 2911 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

Section 6492, Pub. L. 89-10, title I, §1502, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1597, related to demonstrations of innovative practices.

Another prior section 6492, Pub. L. 89-10, title I, §1502, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3604, related to demonstrations of innovative practices, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 1502 of Pub. L. 89-10 was classified to section 2912 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

Section 6493, Pub. L. 89-10, title I, §1503, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1597, related to assessment evaluation.

Another prior section 6493, Pub. L. 89-10, title I, §1503, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3605, related to innovative elementary school transition projects, prior to repeal by Pub. L. 105-277, div. A, §101(f) [title VIII, §301(c)(1)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-410.

Section 6494, Pub. L. 89-10, title I, §1504, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1598, related to Close Up fellowship program.

Section 6511, Pub. L. 89-10, title I, §1601, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1601, stated purpose of former part F of this subchapter.

Another prior section 6511, Pub. L. 89-10, title I, §1601, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3609, related to Federal regulations, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 6571 of this title.

Section 6512, Pub. L. 89-10, title I, §1602, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1601, related to program authorization.

Another prior section 6512, Pub. L. 89-10, title I, §1602, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3610, related to coordination of Federal, State, and local administration, prior to the general amendment of this subchapter by Pub. L. 107-110.

Section 6513, Pub. L. 89-10, title I, §1603, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1602, related to application by State educational agency.

Another prior section 6513, Pub. L. 89-10, title I, §1603, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3611, related to State administration, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 6573 of this title.

Section 6514, Pub. L. 89-10, title I, §1604, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1603, related to use of funds by State educational agency.

Another prior section 6514, Pub. L. 89-10, title I, §1604, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3612, related to construction of provisions, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 6576 of this title.

Section 6515, Pub. L. 89-10, title I, §1605, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1604, related to application by local educational agency.

Section 6516, Pub. L. 89-10, title I, §1606, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1604, related to use of funds by local educational agency.

Section 6517, Pub. L. 89-10, title I, §1607, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1605, related to evaluation of programs and reports.

Section 6518, Pub. L. 89-10, title I, §1608, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1605, related to quality initiatives.

Section 6531, Pub. L. 89-10, title I, §1701, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1606, provided that former part G of this subchapter could be cited as the “Access to High Standards Act”.

Section 6532, Pub. L. 89-10, title I, §1702, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1606, stated purposes of former part G of this subchapter.

Section 6533, Pub. L. 89-10, title I, §1703, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1606, set forth funding distribution rule.

Section 6534, Pub. L. 89-10, title I, §1704, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1606, related to reimbursement of advanced placement test fees.

Section 6535, Pub. L. 89-10, title I, §1705, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1608, related to grants to expand access to advanced placement incentive programs.

Section 6536, Pub. L. 89-10, title I, §1706, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1609, related to use of grants to supplement, not supplant other non-Federal funds.

Section 6537, Pub. L. 89-10, title I, §1707, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1609; amended Pub. L. 108-11, title II, §2503, Apr. 16, 2003, 117 Stat. 599, defined terms in former part G of this subchapter.

Section 6551, Pub. L. 89-10, title I, §1801, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1610, provided that former part H of this subchapter could be cited as the “Dropout Prevention Act”.

Section 6552, Pub. L. 89-10, title I, §1802, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1610, stated purposes of former part H of this subchapter.

Section 6553, Pub. L. 89-10, title I, §1803, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1610, authorized appropriations.

Section 6555, Pub. L. 89-10, title I, §1811, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1610, authorized national activities relating to dropout prevention.

Section 6561, Pub. L. 89-10, title I, §1821, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1612, defined terms in subpart 2 of former part H of this subchapter.

Section 6561a, Pub. L. 89-10, title I, §1822, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1612, authorized grants for school dropout prevention and re-entry programs.

Section 6561b, Pub. L. 89-10, title I, §1823, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1614, related to applications for grants.

Section 6561c, Pub. L. 89-10, title I, §1824, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1615, related to reservation of funds for administrative costs and State activities.

Section 6561d, Pub. L. 89-10, title I, §1825, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1615, related to strategies and capacity building.

Section 6561e, Pub. L. 89-10, title I, §1826, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1616, related to selection of local educational agencies for subgrants.

Section 6561f, Pub. L. 89-10, title I, §1827, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1616, related to use of funds by community-based organizations.

Section 6561g, Pub. L. 89-10, title I, §1828, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1616, related to technical assistance to secondary schools.

Section 6561h, Pub. L. 89-10, title I, §1829, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1616, related to calculation of annual school dropout rate.

Section 6561i, Pub. L. 89-10, title I, §1830, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1616, related to reporting and accountability.

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.

PART F—GENERAL PROVISIONS

CODIFICATION

Pub. L. 114-95, title I, §1501(a)(2), Dec. 10, 2015, 129 Stat. 1905, redesignated part I (§6571 et seq.) of this subchapter as part F of this subchapter.

PRIOR PROVISIONS

A prior part F, consisting of sections 6511 to 6518, related to comprehensive school reform, prior to repeal by Pub. L. 114-95, title I, §1501(a)(1), Dec. 10, 2015, 129 Stat. 1905.

A prior part G, consisting of sections 6531 to 6537, related to advanced placement programs, prior to repeal by Pub. L. 114-95, title I, §1501(a)(1), Dec. 10, 2015, 129 Stat. 1905.

A prior part H, consisting of sections 6551 to 6553, 6555, and 6561 to 6561i, related to school dropout prevention, prior to repeal by Pub. L. 114-95, title I, §1501(a)(1), Dec. 10, 2015, 129 Stat. 1905.

A prior part I, consisting of sections 6571 to 6578, was redesignated part F of this subchapter, by Pub. L. 114-95, title I, §1501(a)(2), Dec. 10, 2015, 129 Stat. 1905.

§ 6571. Federal regulations

(a) In general

The Secretary may issue, in accordance with subsections (b) through (d) and subject to section 6311(e) of this title, such regulations as are necessary to reasonably ensure that there is compliance with this subchapter.

(b) Negotiated rulemaking process

(1) In general

Before publishing in the Federal Register proposed regulations to carry out this subchapter, the Secretary shall obtain the advice and recommendations of representatives of Federal, State, and local administrators, parents, teachers, principals, other school leaders (including charter school leaders), paraprofessionals, and members of local school boards and other organizations involved with the implementation and operation of programs under this subchapter.

(2) Meetings and electronic exchange

Such advice and recommendations may be obtained through such mechanisms as regional

meetings and electronic exchanges of information. Such regional meetings and electronic exchanges of information shall be public and notice of such meetings and exchanges shall be provided to interested stakeholders.

(3) Proposed regulations

After obtaining such advice and recommendations, and before publishing proposed regulations, the Secretary shall—

(A) establish a negotiated rulemaking process on, at a minimum, standards, assessments under section 6311(b)(2) of this title, and the requirement under section 6321 of this title that funds under part A be used to supplement, and not supplant, State and local funds;

(B) select individuals to participate in such process from among individuals or groups that provided advice and recommendations, including representation from all geographic regions of the United States, in such numbers as will provide an equitable balance between representatives of parents and students and representatives of educators and education officials; and

(C) prepare a draft of proposed policy options that shall be provided to the individuals selected by the Secretary under subparagraph (B) not less than 15 days before the first meeting under such process.

(4) Process

Such process—

(A) shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.); and

(B) shall, unless otherwise provided as described in subsection (c), follow the provisions of subchapter III of chapter 5 of title V¹ (commonly known as the “Negotiated Rulemaking Act of 1990”).

(c) Alternative process for certain exceptions

If consensus, as defined in section 562 of title 5, on any proposed regulation is not reached by the individuals selected under subsection (b)(3)(B) for the negotiated rulemaking process, or if the Secretary determines that a negotiated rulemaking process is unnecessary, the Secretary may propose a regulation in the following manner:

(1) Notice to Congress

Not less than 15 business days prior to issuing a notice of proposed rulemaking in the Federal Register, the Secretary shall provide to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Education and the Workforce of the House of Representatives, and other relevant congressional committees, notice of the Secretary’s intent to issue a notice of proposed rulemaking that shall include—

(A) a copy of the proposed regulation;

(B) the need to issue the regulation;

(C) the anticipated burden, including the time, cost, and paperwork burden, the regulation will impose on State educational agencies, local educational agencies, schools, and other entities that may be impacted by the regulation;

¹ So in original. Probably should be “5”.