

326; renumbered §439 and amended Pub. L. 103-382, title II, §§212(b)(1), 261(d), Oct. 20, 1994, 108 Stat. 3913, 3927.)

## REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

## CODIFICATION

“Sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5)” and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

## PRIOR PROVISIONS

A prior section 439 of Pub. L. 90-247 was renumbered section 445, and is classified to section 1232h of this title.

## AMENDMENTS

1994—Pub. L. 103-382, §261(d), substituted “All laborers” for “Except for emergency relief under section 241-1 of this title, all laborers”.

## PART 3—ADMINISTRATION OF EDUCATION PROGRAMS AND PROJECTS BY STATES AND LOCAL EDUCATIONAL AGENCIES

**§ 1232c. State agency monitoring and enforcement****(a) State plan**

In the case of any applicable program in which Federal funds are made available to local agencies in a State through or under the supervision of a State board or agency, the Secretary may require the State to submit a plan for monitoring compliance by local agencies with Federal requirements under such program and for enforcement by the State of such requirements. The Secretary may require such plan to provide—

(1) for periodic visits by State personnel of programs administered by local agencies to determine whether such programs are being conducted in accordance with such requirements;

(2) for periodic audits of expenditures under such programs by auditors of the State or other auditors not under the control, direction, or supervision of the local educational agency; and

(3) that the State investigate and resolve all complaints received by the State, or referred to the State by the Secretary, relating to the administration of such programs.

**(b) State enforcement of Federal requirements**

In order to enforce the Federal requirements under any applicable program the State may—

(1) withhold approval, in whole or in part, of the application of a local agency for funds under the program until the State is satisfied that such requirements will be met; except that the State shall not finally disapprove such an application unless the State provides the local agency an opportunity for a hearing before an impartial hearing officer and such officer determines that there has been a sub-

stantial failure by the local agency to comply with any of such requirements;

(2) suspend payments to any local agency, in whole or in part, under the program if the State has reason to believe that the local agency has failed substantially to comply with any of such requirements, except that (A) the State shall not suspend such payments until fifteen days after the State provides the local agency an opportunity to show cause why such action should not be taken and (B) no such suspension shall continue in effect longer than sixty days unless the State within such period provides the notice for a hearing required under paragraph (3) of this subsection;

(3) withhold payments, in whole or in part, under any such program if the State finds, after reasonable notice and opportunity for a hearing before an impartial hearing officer, that the local agency has failed substantially to comply with any of such requirements.

**(c) Withholding of payments**

Any withholding of payments under subsection (b)(3) of this subsection<sup>1</sup> shall continue until the State is satisfied that there is no longer a failure to comply substantially with any of such requirements.

(Pub. L. 90-247, title IV, §440, formerly §434, as added Pub. L. 95-561, title XII, §1231(a)(3), Nov. 1, 1978, 92 Stat. 2342; renumbered §440 and amended Pub. L. 103-382, title II, §§212(b)(1), 261(e), Oct. 20, 1994, 108 Stat. 3913, 3927.)

## PRIOR PROVISIONS

A prior section 1232c, Pub. L. 90-247, title IV, §434, formerly §424, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 169; renumbered §434 and amended Pub. L. 92-318, title III, §301(a)(1), title V, §501, June 23, 1972, 86 Stat. 326, 345; Pub. L. 93-380, title V, §§510, 511(a), Aug. 21, 1974, 88 Stat. 568, 569; Pub. L. 94-482, title V, §501(f)(1), Oct. 12, 1976, 90 Stat. 2237, related to administration of education programs and projects, prior to repeal by section 1231(a)(3) of Pub. L. 95-561.

A prior section 440 of Pub. L. 90-247 was renumbered section 446, and is classified to section 1232i of this title.

## AMENDMENTS

1994—Pub. L. 103-382, §261(e)(1), struck out “educational” after “State” in section catchline.

Subsec. (a). Pub. L. 103-382, §261(e)(2)(A), substituted “Secretary” for “Commissioner” wherever appearing.

Subsecs. (b), (c). Pub. L. 103-382, §261(e)(2)(B), (C), redesignated provision following par. (3) of subsec. (b) as subsec. (c) and substituted “subsection (b)(3)” for “paragraph (3)”.

## EFFECTIVE DATE

Pub. L. 95-561, title XII, §1261, Nov. 1, 1978, 92 Stat. 2356, provided that: “The amendments made by section 1231 [enacting this section and sections 1232d, 1232e, and 1232f of this title and amending section 1088f-1 of this title] shall take effect with respect to appropriations for fiscal year 1980 and subsequent fiscal years. The amendments made by section 1232 [enacting sections 1234, 1234a, 1234b, 1234c, 1234d, and 1234e of this title]

<sup>1</sup> So in original. Probably should be “section”.

shall take effect 120 days after the enactment of this Act [Nov. 1, 1978].”

APPLICABILITY OF ADMINISTRATIVE PROCEDURE TO OFFICE OF EDUCATION OR ACTIONS BY COMMISSIONER UNAFFECTED BY SUBSECTIONS (b) TO (e)

Pub. L. 93-380, title V, § 511(b)(2), Aug. 21, 1974, 88 Stat. 571, provided that nothing in the amendment made by subsec. (a) of section 511 of Pub. L. 93-380, which enacted prior subsecs. (b) to (e) and deleted former subsec. (b) of this section, would be construed to affect the applicability of chapter 5 of Title 5, Government Organization and Employees, to the Office of Education or actions by the Commissioner.

**§ 1232d. Single State application**

**(a) Submission of general application; approval by State supervisory authority**

In the case of any State which applies, contracts, or submits a plan for participation in any applicable program in which Federal funds are made available for assistance to local educational agencies through, or under the supervision of, the State educational agency of that State, such State shall submit (subject to the provisions of part D of title IV of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7231 et seq.]) to the Secretary a general application containing the assurances set forth in subsection (b). Such application may be submitted jointly for all programs covered by the application, or it may be submitted separately for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

**(b) Assurances**

An application submitted under subsection (a) shall set forth assurances, satisfactory to the Secretary—

(1) that each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to such entities, and that the public agency or nonprofit private agency, institution, or organization will administer such funds and property;

(3) that the State will adopt and use proper methods of administering each applicable program, including—

(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law,

(B) providing technical assistance, where necessary, to such agencies, institutions, and organizations,

(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations,

(D) the dissemination throughout the State of information on program requirements and successful practices, and

(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) that the State will evaluate the effectiveness of covered programs in meeting their statutory objectives, at such intervals (not less often than once every three years) and in accordance with such procedures as the Secretary may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

(5) that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

(6) that the State will make reports to the Secretary (including reports on the results of evaluations required under paragraph (4)) as may reasonably be necessary to enable the Secretary to perform his duties under each program, and that the State will maintain such records, in accordance with the requirements of section 1232f of this title, and afford access to the records as the Secretary may find necessary to carry out his duties;

(7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

(A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

(B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Secretary or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least thirty days;

(C) the State will hold public hearings on the proposed plans if required by the Secretary by regulation; and

(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations; and

(8) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

**(c) Effective term of general application**

Each general application submitted under this section shall remain in effect for the duration of