

(Pub. L. 89–10, title VIII, § 8306, formerly title IX, § 9306, as added Pub. L. 107–110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1971; renumbered title VIII, § 8306, and amended Pub. L. 114–95, title VIII, §§ 8001(a)(3), (b)(2), 8012, Dec. 10, 2015, 129 Stat. 2088, 2089, 2102.)

#### PRIOR PROVISIONS

A prior section 7851, Pub. L. 89–10, title IX, § 9131, as added Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3790, which related to improvement of educational opportunities for adult Indians, was omitted in the general amendment of former subchapter IX of this chapter by Pub. L. 107–110.

#### AMENDMENTS

2015—Subsec. (a). Pub. L. 114–95, § 8012(1), struck out “whether separately or pursuant to section 7845 of this title,” before “shall have on file” in introductory provisions.

Pub. L. 114–95, § 8001(b)(2), made technical amendment to reference in original act which appears in introductory provisions as reference to section 7845 of this title.

Subsec. (a)(2). Pub. L. 114–95, § 8012(2), substituted “eligible” for “nonprofit” in subpars. (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 D—WAIVERS

### § 7861. Waivers of statutory and regulatory requirements

#### (a) In general

##### (1) Request for waiver by State or Indian tribe

A State educational agency or Indian tribe that receives funds under a program authorized under this chapter may submit a request to the Secretary to waive any statutory or regulatory requirement of this chapter.

##### (2) Local educational agency and school requests submitted through the State

###### (A) Request for waiver by local educational agency

A local educational agency that receives funds under a program authorized under this chapter and desires a waiver of any statutory or regulatory requirement of this chapter shall submit a request containing the information described in subsection (b)(1) to the appropriate State educational agency. The State educational agency may then submit the request to the Secretary if the State educational agency determines the waiver appropriate.

###### (B) Request for waiver by school

An elementary school or secondary school that desires a waiver of any statutory or regulatory requirement of this chapter shall submit a request containing the information described in subsection (b)(1) to the local educational agency serving the school. The local educational agency may then submit the request to the State educational agency in accordance with subparagraph (A) if the local educational agency determines the waiver appropriate.

##### (3) Receipt of waiver

Except as provided in subsection (b)(4) or (c), the Secretary may waive any statutory or regulatory requirement of this chapter for which a waiver request is submitted to the Secretary pursuant to this subsection.

#### (b) Request for waiver

##### (1) In general

A State educational agency, acting on its own behalf or on behalf of a local educational agency in accordance with subsection (a)(2), or Indian tribe that desires a waiver shall submit a waiver request to the Secretary, which shall include a plan that—

(A) identifies the Federal programs affected by the requested waiver;

(B) describes which Federal statutory or regulatory requirements are to be waived;

(C) describes how the waiving of such requirements will advance student academic achievement;

(D) describes the methods the State educational agency, local educational agency, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan;

(E) includes only information directly related to the waiver request; and

(F) describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested 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.

##### (2) Additional information

Such requests—

(A) may provide for waivers of requirements applicable to State educational agencies, local educational agencies, Indian tribes, and schools; and

(B) shall be developed and submitted—

(i) (I) by local educational agencies (on behalf of those agencies and schools) to State educational agencies; and

(II) by State educational agencies (on behalf of those agencies or on behalf of, and based on the requests of, local educational agencies in the State) to the Secretary; or

(ii) by Indian tribes (on behalf of schools operated by the tribes) to the Secretary.

##### (3) General requirements

###### (A) State educational agencies

In the case of a waiver request submitted by a State educational agency acting on its own behalf, or on behalf of local educational agencies in the State under subsection (a)(2), the State educational agency shall—

(i) provide the public and any interested local educational agency in the State with notice and a reasonable opportunity to comment and provide input on the request,

to the extent that the request impacts the local educational agency;

(ii) submit the comments and input to the Secretary, with a description of how the State addressed the comments and input; and

(iii) provide notice and a reasonable time to comment to the public and local educational agencies in the manner in which the applying agency customarily provides similar notice and opportunity to comment to the public.

**(B) Local educational agencies**

In the case of a waiver request submitted by a local educational agency that receives funds under this chapter—

(i) the request shall be reviewed and approved by the State educational agency in accordance with subsection (a)(2) before being submitted to the Secretary and be accompanied by the comments, if any, of the State educational agency and the public; and

(ii) notice and a reasonable opportunity to comment regarding the waiver request shall be provided to the State educational agency and the public by the agency requesting the waiver in the manner in which that agency customarily provides similar notice and opportunity to comment to the public.

**(4) Waiver determination, demonstration, and revision**

**(A) In general**

The Secretary shall issue a written determination regarding the initial approval or disapproval of a waiver request not more than 120 days after the date on which such request is submitted. Initial disapproval of such request shall be based on the determination of the Secretary that—

(i) the waiver request does not meet the requirements of this section;

(ii) the waiver is not permitted under subsection (c);

(iii) the description required under paragraph (1)(C) in the plan provides insufficient information to demonstrate that the waiving of such requirements will advance student academic achievement consistent with the purposes of this chapter; or

(iv) the waiver request does not provide for adequate evaluation to ensure review and continuous improvement of the plan.

**(B) Waiver determination and revision**

Upon the initial determination of disapproval under subparagraph (A), the Secretary shall—

(i) immediately—

(I) notify the State educational agency, local educational agency (through the State educational agency), school (through the local educational agency), or Indian tribe, as applicable, of such determination; and

(II) provide detailed reasons for such determination in writing to the applicable entity under subclause (I) to the public, such as posting in a clear and easily

accessible format to the Department's website;

(ii) offer the State educational agency, local educational agency (through the State educational agency), school (through the local educational agency), or Indian tribe an opportunity to revise and resubmit the waiver request by a date that is not more than 60 days after the date of such determination; and

(iii) if the Secretary determines that the resubmission under clause (ii) does not meet the requirements of this section, at the request of the State educational agency, local educational agency, school, or Indian tribe, conduct a hearing not more than 30 days after the date of such resubmission.

**(C) Waiver disapproval**

The Secretary may ultimately disapprove a waiver request if—

(i) the State educational agency, local educational agency, school, or Indian tribe has been notified and offered an opportunity to revise and resubmit the waiver request, as described under clauses (i) and (ii) of subparagraph (B); and

(ii) the State educational agency, local educational agency (through the State educational agency), school (through the local educational agency), or Indian tribe—

(I) does not revise and resubmit the waiver request; or

(II) revises and resubmits the waiver request, and the Secretary determines that such waiver request does not meet the requirements of this section after a hearing conducted under subparagraph (B)(iii), if such a hearing is requested.

**(D) External conditions**

The Secretary shall not disapprove a waiver request under this section based on conditions outside the scope of the waiver request.

**(c) Restrictions**

The Secretary shall not waive under this section any statutory or regulatory requirements relating to—

(1) the allocation or distribution of funds to States, local educational agencies, Indian tribes, or other recipients of funds under this chapter;

(2) maintenance of effort;

(3) comparability of services;

(4) use of Federal funds to supplement, not supplant, non-Federal funds;

(5) equitable participation of private school students and teachers;

(6) parental participation and involvement;

(7) applicable civil rights requirements;

(8) the requirement for a charter school under part C of subchapter IV;

(9) the prohibitions—

(A) in subpart 2 of part F;

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

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

(10) the selection of a school attendance area or school under subsections (a) and (b) of section 6313 of this title, except that the Secretary may grant a waiver to allow a school attendance area or school to participate in activities under part A of subchapter I if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the local educational agency that meets the requirements of subsections (a) and (b) of section 6313 of this title.

**(d) Duration and extension of waiver; limitations**

**(1) In general**

Except as provided in paragraph (2), a waiver approved by the Secretary under this section may be for a period not to exceed 4 years.

**(2) Extension**

The Secretary may extend the period described in paragraph (1) if the State demonstrates that—

(A) the waiver has been effective in enabling the State or affected recipient to carry out the activities for which the waiver was requested and the waiver has contributed to improved student achievement; and

(B) the extension is in the public interest.

**(3) Specific limitations**

The Secretary shall not require a State educational agency, local educational agency, school, or Indian tribe, as a condition of approval of a waiver request, to—

(A) include in, or delete from, such request, specific academic standards, such as the Common Core State Standards developed under the Common Core State Standards Initiative or any other standards common to a significant number of States;

(B) use specific academic assessment instruments or items, including assessments aligned to the standards described in subparagraph (A); or

(C) include in, or delete from, such waiver request any specific elements of—

(i) State academic standards;

(ii) academic assessments;

(iii) State accountability systems; or

(iv) teacher and school leader evaluation systems.

**(e) Reports**

A State educational agency, local educational agency, school, or Indian tribe receiving a waiver under this section shall describe, as part of, and pursuant to, the required annual reporting under section 6311(h) of this title—

(1) the progress of schools covered under the provisions of such waiver toward improving student academic achievement; and

(2) how the use of the waiver has contributed to such progress.

**(f) Termination of waivers**

The Secretary shall terminate a waiver under this section if, after notice and an opportunity for a hearing, the Secretary—

(A) presents a rationale and supporting information that clearly demonstrates that the

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) 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