

**TITLE VI—FLEXIBILITY AND
ACCOUNTABILITY**

SEC. 601. FLEXIBILITY AND ACCOUNTABILITY.

Title VI (20 U.S.C. 7301 et seq.) is amended to read as follows:

**“TITLE VI—FLEXIBILITY AND
ACCOUNTABILITY**

**“PART A—IMPROVING ACADEMIC
ACHIEVEMENT**

“Subpart 1—Accountability

**“SEC. 6111. GRANTS FOR STATE ASSESSMENTS AND RELATED
ACTIVITIES.**

“The Secretary shall make grants to States to enable the States—

“(1) to pay the costs of the development of the additional State assessments and standards required by section 1111(b), which may include the costs of working in voluntary partnerships with other States, at the sole discretion of each such State; and

“(2) if a State has developed the assessments and standards required by section 1111(b), to administer those assessments or to carry out other activities described in this subpart and other activities related to ensuring that the State’s schools and local educational agencies are held accountable for results, such as the following:

“(A) Developing challenging State academic content and student academic achievement standards and aligned assessments in academic subjects for which standards and assessments are not required by section 1111(b).

“(B) Developing or improving assessments of English language proficiency necessary to comply with section 1111(b)(7).

“(C) Ensuring the continued validity and reliability of State assessments.

“(D) Refining State assessments to ensure their continued alignment with the State’s academic content standards and to improve the alignment of curricula and instructional materials.

“(E) Developing multiple measures to increase the reliability and validity of State assessment systems.

“(F) Strengthening the capacity of local educational agencies and schools to provide all students the opportunity to increase educational achievement, including carrying out professional development activities aligned with State student academic achievement standards assessments.

“(G) Expanding the range of accommodations available to students with limited English proficiency and students with disabilities to improve the rates of inclusion of such students, including professional development activities aligned with State academic achievement standards and assessments.

“(H) Improving the dissemination of information on student achievement and school performance to parents and the community, including the development of information and reporting systems designed to identify best educational practices based on scientifically based research or to assist in linking records of student achievement, length of enrollment, and graduation over time.

“SEC. 6112. GRANTS FOR ENHANCED ASSESSMENT INSTRUMENTS.

“(a) GRANT PROGRAM AUTHORIZED.—From funds made available to carry out this subpart, the Secretary shall award, on a competitive basis, grants to State educational agencies that have submitted an application at such time, in such manner, and containing such information as the Secretary may require, which demonstrate to the satisfaction of the Secretary, that the requirements of this section will be met, for the following:

“(1) To enable States (or consortia of States) to collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for such assessments described in section 1111(b)(3).

“(2) To measure student academic achievement using multiple measures of student academic achievement from multiple sources.

“(3) To chart student progress over time.

“(4) To evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance and technology-based academic assessments.

“(b) APPLICATION.—Each State wishing to apply for funds under this section shall include in its State plan under part A of title I such information as the Secretary may require.

“(c) ANNUAL REPORT.—Each State educational agency receiving a grant under this section shall submit an annual report to the Secretary describing its activities, and the result of those activities, under the grant.

“SEC. 6113. FUNDING.

“(a) AUTHORIZATION OF APPROPRIATIONS.—

“(1) NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS.— For the purpose of administering the State assessments under the National Assessment of Educational Progress, there are

authorized to be appropriated \$72,000,000 for fiscal year 2002, and such sums as may be necessary for each of the 5 succeeding fiscal years.

“(2) STATE ASSESSMENTS AND RELATED ACTIVITIES.— or the purpose of carrying out this subpart, there are authorized to be appropriated \$490,000,000 for fiscal year 2002, and such sums as may be necessary for each of the 5 succeeding fiscal years.

“(b) ALLOTMENT OF APPROPRIATED FUNDS.—

“(1) IN GENERAL.—From amounts made available for each fiscal year under subsection (a)(2) that are equal to or less than the amount described in section 1111(b)(3)(D) (hereinafter in this subsection referred to as the ‘trigger amount’), the Secretary shall—

“(A) reserve one-half of 1 percent for the Bureau of Indian Affairs;

“(B) reserve one-half of 1 percent for the outlying areas; and

“(C) from the remainder, allocate to each State an amount equal to—

“(i) \$3,000,000; and

“(ii) with respect to any amounts remaining after the allocation is made under clause (i), an amount that bears the same relationship to such total remaining amounts as the number of students ages 5 through 17 in the State (as determined by the Secretary on the basis of the most recent satisfactory data) bears to the total number of such students in all States.

“(2) REMAINDER.—Any amounts remaining for a fiscal year after the Secretary carries out paragraph (1) shall be made available as follows:

“(A)(i) To award funds under section 6112 to States according to the quality, needs, and scope of the State application under that section.

“(ii) In determining the grant amount under clause (i), the Secretary shall ensure that a State’s grant shall include an amount that bears the same relationship to the total funds available under this paragraph for the fiscal year as the number of students ages 5 through 17 in the State (as determined by the Secretary on the basis of the most recent satisfactory data) bears to the total number of such students in all States.

“(B) Any amounts remaining after the Secretary awards funds under subparagraph (A) shall be allocated to each State that did not receive a grant under such subparagraph, in an amount that bears the same relationship to the total funds available under this subparagraph as the number of students ages 5 through 17 in the State (as determined by the Secretary on the basis of the most

recent satisfactory data) bears to the total number of such students in all States.

“(c) STATE DEFINED.—In this section, the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

“Subpart 2—Funding Transferability for State and Local Educational Agencies

“SEC. 6121. SHORT TITLE.

“This subpart may be cited as the ‘State and Local Transfer-ability Act’.

“SEC. 6122. PURPOSE.

“The purpose of this subpart is to allow States and local educational agencies the flexibility—

“(1) to target Federal funds to Federal programs that most effectively address the unique needs of States and localities; and

“(2) to transfer Federal funds allocated to other activities to allocations for certain activities authorized under title I.

“SEC. 6123. TRANSFERABILITY OF FUNDS.

“(a) TRANSFERS BY STATES.—

“(1) IN GENERAL.—In accordance with this subpart, a State may transfer not more than 50 percent of the nonadministrative State funds (including funds transferred under paragraph (2)) allotted to the State for use for State-level activities under the following provisions for a fiscal year to one or more of the State’s allotments for such fiscal year under any other of such provisions:

“(A) Section 2113(a)(3).

“(B) Section 2412(a)(1).

“(C) Subsections (a)(1) (with the agreement of the Governor) and (c)(1) of section 4112 and section 4202(c)(3).

“(D) Section 5112(b).

“(2) ADDITIONAL FUNDS FOR TITLE I.—In accordance with this subpart and subject to the 50 percent limitation described in paragraph (1), a State may transfer any funds allotted to the State under a provision listed in paragraph (1) to its allotment under title I.

“(b) TRANSFERS BY LOCAL EDUCATIONAL AGENCIES.—

“(1) AUTHORITY TO TRANSFER FUNDS.—

“(A) IN GENERAL.—In accordance with this subpart, a local educational agency (except a local educational agency identified for improvement under section 1116(c) or subject to corrective action under section 1116(c)(9)) may transfer not more than 50 percent of the funds allocated to it (including funds transferred under subparagraph (C)) under each of the provisions listed in paragraph (2) for a fiscal year to one or more of its allocations for such fiscal year under any other provision listed in paragraph (2).

“(B) AGENCIES IDENTIFIED FOR IMPROVEMENT.—In accordance with this subpart, a local educational agency identified for improvement under section 1116(c) may transfer not more than 30 percent of the funds allocated to it (including funds transferred under subparagraph (C)) under each of the provisions listed in paragraph (2) for a fiscal year—

“(i) to its allocation for school improvement for such fiscal year under section 1003; or

“(ii) to any other allocation for such fiscal year if such transferred funds are used only for local educational agency improvement activities consistent with section 1116(c).

“(C) ADDITIONAL FUNDS FOR TITLE I.—In accordance with this subpart and subject to the percentage limitation described in subparagraph (A) or (B), as applicable, a local educational agency may transfer funds allocated to such agency under any of the provisions listed in paragraph (2) for a fiscal year to its allocation for part A of title I for that fiscal year.

“(2) APPLICABLE PROVISIONS.—A local educational agency may transfer funds under subparagraph (A), (B), or (C) of paragraph (1) from allocations made under each of the following provisions:

“(A) Section 2121.

“(B) Section 2412(a)(2)(A).

“(C) Section 4112(b)(1).

“(D) Section 5112(a).

“(c) NO TRANSFER OF TITLE I FUNDS.—A State or a local educational agency may not transfer under this subpart to any other program any funds allotted or allocated to it for part A of title I.

“(d) MODIFICATION OF PLANS AND APPLICATIONS; NOTIFICATION.—

“(1) STATE TRANSFERS.—Each State that makes a transfer of funds under this section shall—

“(A) modify, to account for such transfer, each State plan, or application submitted by the State, to which such funds relate;

“(B) not later than 30 days after the date of such transfer, submit a copy of such modified plan or application to the Secretary; and

“(C) not later than 30 days before the effective date of such transfer, notify the Secretary of such transfer.

“(2) LOCAL TRANSFERS.—Each local educational agency that makes a transfer of funds under this section shall—

“(A) modify, to account for such transfer, each local plan, or application submitted by the agency, to which such funds relate;

“(B) not later than 30 days after the date of such transfer, submit a copy of such modified plan or application to the State; and

“(C) not later than 30 days before the effective date of such transfer, notify the State of such transfer.

“(e) APPLICABLE RULES.—

“(1) IN GENERAL.—Except as otherwise provided in this subpart, funds transferred under this section are subject to each of the rules and requirements applicable to the funds under the provision to which the transferred funds are transferred.

“(2) CONSULTATION.—Each State educational agency or local educational agency that transfers funds under this section shall conduct consultations in accordance with section 9501, if such transfer transfers funds from a program that provides for the participation of students, teachers, or other educational personnel, from private schools.

“Subpart 3—State and Local Flexibility Demonstration

“SEC. 6131. SHORT TITLE.

“This subpart may be cited as the ‘State and Local Flexibility Demonstration Act’.

“SEC. 6132. PURPOSE.

“The purpose of this subpart is to create options for selected State educational agencies and local educational agencies—

“(1) to improve the academic achievement of all students, and to focus the resources of the Federal Government upon such achievement;

“(2) to improve teacher quality and subject matter mastery, especially in mathematics, reading, and science;

“(3) to better empower parents, educators, administrators, and schools to effectively address the needs of their children and students;

“(4) to give participating State educational agencies and local educational agencies greater flexibility in determining how to increase their students’ academic achievement and implement education reforms in their schools;

“(5) to eliminate barriers to implementing effective State and local education reform, while preserving the goals of opportunity for all students and accountability for student progress;

“(6) to hold participating State educational agencies and local educational agencies accountable for increasing the academic achievement of all students, especially disadvantaged students; and

“(7) to narrow achievement gaps between the lowest and highest achieving groups of students so that no child is left behind.

“SEC. 6133. GENERAL PROVISION.

“For purposes of this subpart, any State that is one local educational agency shall be considered a State educational agency and not a local educational agency.

“CHAPTER A—STATE FLEXIBILITY AUTHORITY

“SEC. 6141. STATE FLEXIBILITY.

“(a) FLEXIBILITY AUTHORITY.—Except as otherwise provided in this chapter, the Secretary shall, on a competitive basis, grant flexibility authority to not more than seven eligible State educational agencies, under which the agencies may consolidate and use funds in accordance with section 6142.

“(b) DEFINITIONS.—In this chapter:

“(1) ELIGIBLE STATE EDUCATIONAL AGENCY.—The term ‘eligible State educational agency’ means a State educational agency that—

“(A) submits an approvable application under sub-section (c);
and

“(B) proposes performance agreements—

“(i) that shall be entered into with not fewer than 4, and not more than 10, local educational agencies;

“(ii) not fewer than half of which shall be entered into with high-poverty local educational agencies; and

“(iii) that require the local educational agencies described in clause (i) to align their use of consolidated funds under section 6152 with the State educational agency’s use of consolidated funds under section 6142.

“(2) HIGH-POVERTY LOCAL EDUCATIONAL AGENCY.—The term ‘high-poverty local educational agency’ means a local educational agency for which 20 percent or more of the children who are age 5 through 17, and served by the local educational agency, are from families with incomes below the poverty line.

“(c) STATE APPLICATIONS.—

“(1) APPLICATIONS.—To be eligible to receive flexibility authority under this chapter, a State educational agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

“(A) information demonstrating, to the satisfaction of the Secretary, that the grant of authority offers substantial promise of—

“(i) assisting the State educational agency in making adequate yearly progress, as defined under section 1111(b)(2);
and

“(ii) aligning State and local reforms and assisting the local educational agencies that enter into performance agreements with the State educational agency under paragraph (2) in making such adequate yearly progress;

“(B) the performance agreements that the State educational agency proposes to enter into with eligible local educational agencies under paragraph (2);

“(C) information demonstrating that the State educational agency has consulted with and involved parents, representatives of local educational agencies, and other educators in the development of the terms of the grant of authority;

“(D) a provision specifying that the grant of flexibility authority shall be for a term of not more than 5 years;

“(E) a list of the programs described in section 6142(b) that are included in the scope of the grant of authority;

“(F) a provision specifying that no requirements of any program described in section 6142(b) and included by a State educational agency in the scope of the grant of authority shall apply to that agency, except as otherwise provided in this chapter;

“(G) a 5-year plan describing how the State educational agency intends to consolidate and use the funds from programs included in the scope of the grant of authority, for any educational purpose authorized under this Act, in order to make adequate yearly progress and advance the education priorities of the State and the local educational agencies with which the State educational agency enters into performance agreements;

“(H) an assurance that the State educational agency will provide parents, teachers, and representatives of local educational agencies and schools with notice and an opportunity to comment on the proposed terms of the grant of authority;

“(I) an assurance that the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the grant of authority;

“(J) an assurance that the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, will meet the requirements of all applicable Federal civil rights laws in carrying out the grant of authority, including consolidating and using funds under the grant of authority;

“(K) an assurance that, in consolidating and using funds under the grant of authority—

“(i) the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, will provide for the equitable participation of students and professional staff in private schools consistent with section 9501; and

“(ii) that sections 9502, 9503, and 9504 shall apply to all services and assistance provided with such funds in the same

manner as such sections apply to services and assistance provided in accordance with section 9501;

“(L) an assurance that the State educational agency will, for the duration of the grant of authority, use funds consolidated under section 6142 only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds; and

“(M) an assurance that the State educational agency shall, not later than 1 year after the date on which the Secretary makes the grant of authority, and annually thereafter during the term of the grant of authority, disseminate widely to parents and the general public, transmit to the Secretary, distribute to print and broadcast media, and post on the Internet, a report, which shall include a detailed description of how the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, used the funds consolidated under the grant of authority to make adequate yearly progress and advance the education priorities of the State and local educational agencies in the State.

“(2) PROPOSED PERFORMANCE AGREEMENTS WITH LOCAL EDUCATIONAL AGENCIES.—

“(A) IN GENERAL.—A State educational agency that wishes to receive flexibility authority under this subpart shall propose performance agreements that meet the requirements of clauses (i) and (ii) of subsection (b)(1)(B) (subject to approval of the application or amendment involved under subsection (d) or (e)).

“(B) PERFORMANCE AGREEMENTS.—Each proposed performance agreement with a local educational agency shall—

“(i) contain plans for the local educational agency to consolidate and use funds in accordance with section 6152, for activities that are aligned with the State educational agency’s plan described in paragraph (1)(G);

“(ii) be subject to the requirements of chapter B relating to agreements between the Secretary and a local educational agency, except—

“(I) that, as appropriate, references in that chapter to the Secretary shall be deemed to be references to the State educational agency; and

“(II) as otherwise provided in this chapter; and

“(iii) contain an assurance that the local educational agency will, for the duration of the grant of authority, use funds consolidated under section 6152 only to supplement the amount

of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds.

“(d) APPROVAL AND SELECTION.—The Secretary shall—

“(1) establish a peer review process to assist in the review of proposed State applications under this section; and

“(2) appoint individuals to participate in the peer review process who are—

“(A) representative of parents, teachers, State educational agencies, and local educational agencies; and

“(B) familiar with educational standards, assessments, accountability, curricula, instruction, and staff development, and other diverse educational needs of students.

“(e) AMENDMENT TO GRANT OF AUTHORITY.—

“(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall amend the grant of flexibility authority made to a State educational agency under this chapter, in each of the following circumstances:

“(A) REDUCTION IN SCOPE OF THE GRANT OF AUTHORITY.—Not later than 1 year after receiving a grant of flexibility authority, the State educational agency seeks to amend the grant of authority to remove from the scope of the grant of authority any program described in section 6142(b).

“(B) EXPANSION OF SCOPE OF THE GRANT OF AUTHORITY.—Not later than 1 year after receiving a grant of flexibility authority, the State educational agency seeks to amend the grant of authority to include in the scope of the grant of authority any additional program described in section 6142(b) or any additional achievement indicators for which the State will be held accountable.

“(C) CHANGES WITH RESPECT TO NUMBER OF PERFORMANCE AGREEMENTS.—The State educational agency seeks to amend the grant of authority to include or remove performance agreements that the State educational agency proposes to enter into with eligible local educational agencies, except that in no case may the State educational agency enter into performance agreements that do not meet the requirements of clauses (i) and (ii) of subsection (b)(1)(B).

“(2) APPROVAL AND DISAPPROVAL.—

“(A) DEEMED APPROVAL.—A proposed amendment to a grant of flexibility authority submitted by a State educational agency 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 chapter.

“(B) DISAPPROVAL.—The Secretary shall not finally disapprove the proposed amendment, except after giving the State 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 chapter, the Secretary shall—

“(i) give the State educational agency notice and an opportunity for a hearing; and

“(ii) notify the State 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 State 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 State 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 GRANT OF AUTHORITY.—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 grant of authority shall apply to the use of funds made available under the program by the State educational agency and each local educational agency with which the State educational agency has a performance agreement.

“SEC. 6142. CONSOLIDATION AND USE OF FUNDS.

“(a) IN GENERAL.—

“(1) AUTHORITY.—Under a grant of flexibility authority made under this chapter, a State educational agency may consolidate Federal

funds described in subsection (b) and made available to the agency, and use such funds for any educational purpose authorized under this Act.

“(2) PROGRAM REQUIREMENTS.—Except as otherwise provided in this chapter, a State educational agency may use funds under paragraph (1) notwithstanding the program requirements of the program under which the funds were made available to the State.

“(b) ELIGIBLE FUNDS AND PROGRAMS.—

“(1) FUNDS.—The funds described in this subsection are funds, for State-level activities and State administration, that are described in the following provisions:

“(A) Section 1004.

“(B) Paragraphs (4) and (5) of section 1202(d).

“(C) Section 2113(a)(3).

“(D) Section 2412(a)(1).

“(E) Subsections (a) (with the agreement of the Governor), (b)(2), and (c)(1) of section 4112.

“(F) Paragraphs (2) and (3) of section 4202(c).

“(G) Section 5112(b).

“(2) PROGRAMS.—The programs described in this subsection are the programs authorized to be carried out with funds described in paragraph (1).

“(c) SPECIAL RULE.—A State educational agency that receives a grant of flexibility authority under this chapter—

“(1) shall ensure that the funds described in section 5112(a) are allocated to local educational agencies in the State in accordance with section 5112(a); but

“(2) may specify how the local educational agencies shall use the allocated funds.

“SEC. 6143. PERFORMANCE REVIEW AND PENALTIES.

“(a) MIDTERM REVIEW.—

“(1) FAILURE TO MAKE ADEQUATE YEARLY PROGRESS.—If, during the term of a grant of flexibility authority under this chapter, a State educational agency fails to make adequate yearly progress for 2 consecutive years, the Secretary shall, after providing notice and an opportunity for a hearing, terminate the grant of authority promptly.

“(2) NONCOMPLIANCE.—The Secretary may, after providing notice and an opportunity for a hearing (including the opportunity to provide evidence as described in paragraph (3)), terminate a grant of flexibility authority for a State if there is evidence that the State educational agency involved has failed to comply with the terms of the grant of authority.

“(3) EVIDENCE.—If a State educational agency believes that a determination of the Secretary under this subsection is in error for statistical or other substantive reasons, the State educational agency

may provide supporting evidence to the Secretary, and the Secretary shall consider that evidence before making a final termination determination under this sub-section.

“(b) FINAL REVIEW.—

“(1) IN GENERAL.—If, at the end of the 5-year term of a grant of flexibility authority made under this chapter, the State educational agency has not met the requirements described in section 6141(c), the Secretary may not renew the grant of flexibility authority under section 6144.

“(2) COMPLIANCE.—Beginning on the date on which such term ends, the State educational agency, and the local educational agencies with which the State educational agency has entered into performance agreements, shall be required to comply with each of the program requirements in effect on such date for each program that was included in the grant of authority.

“SEC. 6144. RENEWAL OF GRANT OF FLEXIBILITY AUTHORITY.

“(a) IN GENERAL.—Except as provided in section 6143 and in accordance with this section, if a State educational agency has met, by the end of the original 5-year term of a grant of flexibility authority under this chapter, the requirements described in section 6141(c), the Secretary shall renew a grant of flexibility authority for one additional 5-year term.

“(b) RENEWAL.—The Secretary may not renew a grant of flexibility authority under this chapter unless, not later than 6 months before the end of the original term of the grant of authority, the State educational agency seeking the renewal notifies the Secretary, and the local educational agencies with which the State educational agency has entered into performance agreements, of the agency’s intention to renew the grant of authority.

“(c) EFFECTIVE DATE.—A renewal under this section shall be effective on the later of—

“(1) the expiration of the original term of the grant of authority; or

“(2) the date on which the State educational agency seeking the renewal provides to the Secretary all data required for the application described in section 6141(c).

“CHAPTER B—LOCAL FLEXIBILITY DEMONSTRATION

“SEC. 6151. LOCAL FLEXIBILITY DEMONSTRATION AGREEMENTS.

“(a) AUTHORITY.—Except as otherwise provided in this chapter, the Secretary shall, on a competitive basis, enter into local flexibility demonstration agreements—

“(1) with local educational agencies that submit approvable proposed agreements under subsection (c) and that are selected under subsection (b); and

“(2) under which those agencies may consolidate and use funds in accordance with section 6152.

“(b) SELECTION OF LOCAL EDUCATIONAL AGENCIES.—

“(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall enter into local flexibility demonstration agreements under this chapter with not more than 80 local educational agencies. Each local educational agency shall be selected on a competitive basis from among those local educational agencies that—

“(A) submit a proposed local flexibility demonstration agreement under subsection (c) to the Secretary and demonstrate, to the satisfaction of the Secretary, that the agreement—

“(i) has a substantial promise of assisting the local educational agency in meeting the State’s definition of adequate yearly progress, advancing the education priorities of the local educational agency, meeting the general purposes of the programs included under this chapter and the purposes of this part, improving student achievement, and narrowing achievement gaps in accordance with section 1111(b);

“(ii) meets the requirements of this chapter; and

“(iii) contains a plan to consolidate and use funds in accordance with section 6152 in order to meet the State’s definition of adequate yearly progress and the local educational agency’s specific, measurable goals for improving student achievement and narrowing achievement gaps; and

“(B) have consulted and involved parents and other educators in the development of the proposed local flexibility demonstration agreement.

“(2) GEOGRAPHIC DISTRIBUTION.—

“(A) INITIAL AGREEMENTS.—The Secretary may enter into not more than three local flexibility demonstration agreements under this chapter with local educational agencies in each State that does not have a grant of flexibility authority under chapter A.

“(B) URBAN AND RURAL AREAS.—If more than three local educational agencies in a State submit approvable local flexibility demonstration agreements under this chapter, the Secretary shall select local educational agencies with which to enter into such agreements in a manner that ensures an equitable distribution among such agencies serving urban and rural areas.

“(C) PRIORITY OF STATES TO ENTER INTO STATE FLEXIBILITY DEMONSTRATION AGREEMENTS.—Notwithstanding any other provision of this part, a local educational agency may not seek to enter into a local flexibility demonstration agreement under this chapter if that agency is located in a State for which the State educational agency—

“(i) has, not later than 4 months after the date of enactment of the No Child Left Behind Act of 2001, notified the

Secretary of its intent to apply for a grant of flexibility authority under chapter A and, within such period of time as the Secretary may establish, is provided with such authority by the Secretary; or

“(ii) has, at any time after such period, been granted flexibility authority under chapter A.

“(c) **REQUIRED TERMS OF LOCAL FLEXIBILITY DEMONSTRATION AGREEMENT.**—Each local flexibility demonstration agreement entered into with the Secretary under this chapter shall contain each of the following terms:

“(1) **DURATION.**—The local flexibility demonstration agreement shall be for a term of 5 years.

“(2) **APPLICATION OF PROGRAM REQUIREMENTS.**—The local flexibility demonstration agreement shall provide that no requirements of any program described in section 6152 and included by a local educational agency in the scope of its agreement shall apply to that agency, except as otherwise provided in this chapter.

“(3) **LIST OF PROGRAMS.**—The local flexibility demonstration agreement shall list which of the programs described in section 6152 are included in the scope of the agreement.

“(4) **USE OF FUNDS TO IMPROVE STUDENT ACHIEVEMENT.**—The local flexibility demonstration agreement shall contain a 5-year plan describing how the local educational agency intends to consolidate and use the funds from programs included in the scope of the agreement for any educational purpose authorized under this Act to advance the education priorities of the local educational agency, meet the general purposes of the included programs, improve student achievement, and narrow achievement gaps in accordance with section 1111(b).

“(5) **LOCAL INPUT.**—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will provide parents, teachers, and representatives of schools with notice and an opportunity to comment on the proposed terms of the local flexibility demonstration agreement.

“(6) **FISCAL RESPONSIBILITIES.**—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the agreement.

“(7) **CIVIL RIGHTS.**—The local flexibility demonstration agreement shall contain 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 the funds under the agreement.

“(8) **PRIVATE SCHOOL PARTICIPATION.**—The local flexibility demonstration agreement shall contain an assurance that the agency will, for the duration of the grant of authority, use funds consolidated under section 6152 only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds.

“(10) **ANNUAL REPORTS.**—The local flexibility demonstration agreement shall contain an assurance that the local educational agency shall, not later than 1 year after the date on which the Secretary enters into the agreement, and annually thereafter during the term of the agreement, disseminate widely to parents and the general public, transmit to the Secretary, and the State educational agency for the State in which the local educational agency is located, distribute to print and broadcast media, and post on the Internet, a report that includes a detailed description of how the local educational agency used the funds consolidated under the agreement to improve student academic achievement and reduce achievement gaps.

“(d) **PEER REVIEW.**—The Secretary shall—

“(1) establish a peer review process to assist in the review of proposed local flexibility demonstration agreements under this chapter; and

“(2) appoint individuals to the peer review process who are representative of parents, 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 chapter:

“(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 6152.

“(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 6251 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 chapter.

“(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 chapter, 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.

“SEC. 6152. CONSOLIDATION AND USE OF FUNDS.

“(a) IN GENERAL.—

“(1) AUTHORITY.—Under a local flexibility demonstration agreement entered into under this chapter, a local educational agency may consolidate Federal funds made available to the agency under the provisions listed in subsection (b) and use such funds for any educational purpose permitted under this Act.

“(2) PROGRAM REQUIREMENTS.—Except as otherwise provided in this chapter, 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):

“(1) Subpart 2 of part A of title II.

“(2) Subpart 1 of part D of title II.

“(3) Subpart 1 of part A of title IV.

“(4) Subpart 1 of part A of title V.

“SEC. 6153. LIMITATIONS ON ADMINISTRATIVE EXPENDITURES.

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

“SEC. 6154. 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 chapter 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 chapter, the local educational agency has not met the requirements described in section 6151(c), the Secretary may not renew the agreement under section 6155 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.

“SEC. 6155. RENEWAL OF LOCAL FLEXIBILITY DEMONSTRATION AGREEMENT.

“(a) IN GENERAL.—Except as provided in section 6154 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 chapter if the local educational agency has met, by the end of the original term of the agreement, the requirements described in section 6151(c).

“(b) NOTIFICATION.—The Secretary may not renew a local flexibility demonstration agreement under this chapter 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.

“SEC. 6156. REPORTS.

“(a) TRANSMITTAL TO CONGRESS.—Not later than 60 days after the Secretary receives a report described in section 6151(b)(10), 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 6151(b)(10).

“Subpart 4—State Accountability for Adequate Yearly Progress

“SEC. 6161. 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 title I after the date of enactment of the No Child Left Behind Act of 2001, and has a plan approved under subpart 1 of part A of title III of such Act after such date of enactment, 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—

“(1) made adequate yearly progress, as defined in section 1111(b)(2)(B), for each of the groups of students described in section 1111(b)(2)(C)(v); and

“(2) met its annual measurable achievement objectives under section 3122(a).

“SEC. 6162. PEER REVIEW.

“The Secretary shall use a peer review process to review, based on data from the State assessments administered under section 1111(b)(3) and on data from the evaluations conducted under section 3121, whether the State has failed to make adequate yearly progress for 2 consecutive years or whether the State has met its annual measurable achievement objectives.

“SEC. 6163. TECHNICAL ASSISTANCE.

“(a) PROVISION OF ASSISTANCE.—

“(1) ADEQUATE YEARLY PROGRESS.—Based on the review described in section 6161(1), the Secretary shall provide technical assistance to a State that has failed to make adequate yearly progress, as defined in section 1111(b)(2), for 2 consecutive years. The Secretary shall provide such assistance not later than the beginning of the first school year that begins after such determination is made.

“(2) ANNUAL MEASURABLE ACHIEVEMENT OBJECTIVES.—Based on the reviews described in section 6161(2), the Secretary may provide technical assistance to a State that has failed to meet its annual measurable achievement objectives under section 3122(a) for 2 consecutive years. The Secretary shall provide such assistance not later than the beginning of the first school year that begins after such determination is made.

“(b) CHARACTERISTICS.—The technical assistance described in subsection (a) shall—

“(1) be valid, reliable and rigorous; and

“(2) provide constructive feedback to help the State make adequate yearly progress, as defined in section 1111(b)(2), or meet the annual measurable achievement objectives under section 3122(a).

“SEC. 6164. REPORT TO CONGRESS.

“Beginning with the school year that begins in 2005, the Secretary shall submit an annual report 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 containing the following:

“(1) A list of each State that has not made adequate yearly progress based on the review conducted under section 6161(1).

“(2) A list of each State that has not met its annual measurable achievement objectives based on the review conducted under section 6161(2).

“(3) The information reported by the State to the Secretary pursuant to section 1119(a).

“(4) A description of any technical assistance provided pursuant to section 6163.

“PART B—RURAL EDUCATION INITIATIVE

“SEC. 6201. SHORT TITLE.

“This part may be cited as the ‘Rural Education Achievement Program’.

“SEC. 6202. PURPOSE.

“It is the purpose of this part to address the unique needs of rural school districts that frequently—

“(1) lack the personnel and resources needed to compete effectively for Federal competitive grants; and

“(2) receive formula grant allocations in amounts too small to be effective in meeting their intended purposes.

“Subpart 1—Small, Rural School Achievement Program

“SEC. 6211. USE OF APPLICABLE FUNDING.

“(a) ALTERNATIVE USES.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, an eligible local educational agency may use the applicable funding that the agency is eligible to receive from the State educational agency for a fiscal year to carry out local activities authorized under any of the following provisions:

“(A) Part A of title I.

“(B) Part A or D of title II.

“(C) Title III.

“(D) Part A or B of title IV.

“(E) Part A of title V.

“(2) NOTIFICATION.—An eligible local educational agency shall notify the State educational agency of the local educational agency’s intention to use the applicable funding in accordance with paragraph (1), by a date that is established by the State educational agency for the notification.

“(b) ELIGIBILITY.—

“(1) IN GENERAL.—A local educational agency shall be eligible to use the applicable funding in accordance with sub-section (a) if—

“(A)(i)(I) the total number of students in average daily attendance at all of the schools served by the local educational agency is fewer than 600; or

“(II) each county in which a school served by the local educational agency is located has a total population density of fewer than 10 persons per square mile; and

“(ii) all of the schools served by the local educational agency are designated with a school locale code of 7 or 8, as determined by the Secretary; or

“(B) the agency meets the criteria established in subparagraph (A)(i) and the Secretary, in accordance with paragraph (2), grants the local educational agency’s request to waive the criteria described in subparagraph (A)(ii).

“(2) CERTIFICATION.—The Secretary shall determine whether to waive the criteria described in paragraph (1)(A)(ii) based on a demonstration by the local educational agency, and concurrence by the State educational agency, that the local educational agency is located in an area defined as rural by a governmental agency of the State.

“(c) APPLICABLE FUNDING DEFINED.—In this section, the term ‘applicable funding’ means funds provided under any of the following provisions:

“(1) Subpart 2 and section 2412(a)(2)(A) of title II.

“(2) Section 4114.

“(3) Part A of title V.

“(d) DISBURSEMENT.—Each State educational agency that receives applicable funding for a fiscal year shall disburse the applicable funding to local educational agencies for alternative uses under this section for the fiscal year at the same time as the State educational agency disburses the applicable funding to local educational agencies that do not intend to use the applicable funding for such alternative uses for the fiscal year.

“(e) APPLICABLE RULES.—Applicable funding under this section shall be available to carry out local activities authorized under subsection (a).

“SEC. 6212. GRANT PROGRAM AUTHORIZED.

“(a) IN GENERAL.—The Secretary is authorized to award grants to eligible local educational agencies to enable the local educational agencies to carry out activities authorized under any of the following provisions:

“(1) Part A of title I.

“(2) Part A or D of title II.

“(3) Title III.

“(4) Part A or B of title IV.

“(5) Part A of title V.

“(b) ALLOCATION.—

“(1) IN GENERAL.—Except as provided in paragraph (3), the Secretary shall award a grant under subsection (a) to a local educational agency eligible under section 6211(b) for a fiscal year in an amount equal to the initial amount determined under paragraph (2) for the fiscal year

“Subpart 2—Rural and Low-Income School Program

“SEC. 6221. PROGRAM AUTHORIZED.

“(a) GRANTS TO STATES.—

“(1) IN GENERAL.—From amounts appropriated under section 6234 for this subpart for a fiscal year that are not reserved under subsection (c), the Secretary shall award grants (from allotments made under paragraph (2)) for the fiscal year to State educational agencies that have applications submitted under section 6223 approved to enable the State educational agencies to award grants to eligible local educational agencies for local authorized activities described in section 6222(a).

“(2) ALLOTMENT.—From amounts described in paragraph (1) for a fiscal year, the Secretary shall allot to each State educational agency for that fiscal year an amount that bears the same ratio to those amounts as the number of students in average daily attendance served by eligible local educational agencies in the State for that fiscal year bears to the number of all such students served by eligible local educational agencies in all States for that fiscal year.

“(3) SPECIALLY QUALIFIED AGENCIES.—

“(A) ELIGIBILITY AND APPLICATION.—If a State educational agency elects not to participate in the program under this subpart or does not have an application submitted under section 6223 approved, a specially qualified agency in such State desiring a grant under this subpart may submit an application under such section directly to the Secretary to receive an award under this subpart.

“(B) DIRECT AWARDS.—The Secretary may award, on a competitive basis or by formula, the amount the State educational agency is eligible to receive under paragraph (2) directly to a specially qualified agency in the State that has submitted an application in accordance with subparagraph (A) and obtained approval of the application.

“(C) SPECIALLY QUALIFIED AGENCY DEFINED.—In this subpart, the term ‘specially qualified agency’ means an eligible local educational agency served by a State educational agency that does not participate in a program under this subpart in a fiscal year, that may apply directly to the Secretary for a grant in such year under this sub-section.

“(b) LOCAL AWARDS.—

“(1) ELIGIBILITY.—A local educational agency shall be eligible to receive a grant under this subpart if—

minus the total amount received by the agency under the provisions of law described in section 6211(c) for the preceding fiscal year.

“(2) DETERMINATION OF INITIAL AMOUNT.—The initial amount referred to in paragraph (1) is equal to \$100 multiplied by the total number of students in excess of 50 students, in average daily attendance at the schools served by the local educational agency, plus \$20,000, except that the initial amount may not exceed \$60,000.

“(3) RATABLE ADJUSTMENT.—

“(A) IN GENERAL.—If the amount made available to carry out this section for any fiscal year is not sufficient to pay in full the amounts that local educational agencies are eligible to receive under paragraph (1) for such year, the Secretary shall ratably reduce such amounts for such year.

“(B) ADDITIONAL AMOUNTS.—If additional funds become available for making payments under paragraph (1) for such fiscal year, payments that were reduced under subparagraph (A) shall be increased on the same basis as such payments were reduced.

“(c) DISBURSEMENT.—The Secretary shall disburse the funds awarded to a local educational agency under this section for a fiscal year not later than July 1 of that fiscal year.

“(d) SPECIAL ELIGIBILITY RULE.—A local educational agency that is eligible to receive a grant under this subpart for a fiscal year is not eligible to receive funds for such fiscal year under subpart 2.

“SEC. 6213. ACCOUNTABILITY.

“(a) ACADEMIC ACHIEVEMENT ASSESSMENT.—Each local educational agency that uses or receives funds under this subpart for a fiscal year shall administer an assessment that is consistent with section 1111(b)(3).

“(b) DETERMINATION REGARDING CONTINUING PARTICIPATION.— Each State educational agency that receives funding under the provisions of law described in section 6211(c) shall—

“(1) after the third year that a local educational agency in the State participates in a program under this subpart and on the basis of the results of the assessments described in subsection (a), determine whether the local educational agency participating in the program made adequate yearly progress, as described in section 1111(b)(2);

“(2) permit only those local educational agencies that participated and made adequate yearly progress, as described in section 1111(b)(2), to continue to participate; and

“(3) permit those local educational agencies that participated and failed to make adequate yearly progress, as described in section 1111(b)(2), to continue to participate only if such local educational agencies use applicable funding under this subpart to carry out the requirements of section 1116.

“(A) 20 percent or more of the children ages 5 through 17 years served by the local educational agency are from families with incomes below the poverty line; and

“(B) all of the schools served by the agency are designated with a school locale code of 6, 7, or 8, as determined by the Secretary.

“(2) AWARD BASIS.—A State educational agency shall award grants to eligible local educational agencies—

“(A) on a competitive basis;

“(B) according to a formula based on the number of students in average daily attendance served by the eligible local educational agencies or schools in the State; or

“(C) according to an alternative formula, if, prior to awarding the grants, the State educational agency demonstrates, to the satisfaction of the Secretary, that the alternative formula enables the State educational agency to allot the grant funds in a manner that serves equal or greater concentrations of children from families with incomes below the poverty line, relative to the concentrations that would be served if the State educational agency used the formula described in subparagraph (B).

“(c) RESERVATIONS.—From amounts appropriated under section 6234 for this subpart for a fiscal year, the Secretary shall reserve—

“(1) one-half of 1 percent to make awards to elementary schools or secondary schools operated or supported by the Bureau of Indian Affairs, to carry out the activities authorized under this subpart; and

“(2) one-half of 1 percent to make awards to the outlying areas in accordance with their respective needs, to carry out the activities authorized under this subpart.

“SEC. 6222. USES OF FUNDS.

“(a) LOCAL AWARDS.—Grant funds awarded to local educational agencies under this subpart shall be used for any of the following:

“(1) Teacher recruitment and retention, including the use of signing bonuses and other financial incentives.

“(2) Teacher professional development, including programs that train teachers to utilize technology to improve teaching and to train special needs teachers.

“(3) Educational technology, including software and hardware, as described in part D of title II.

“(4) Parental involvement activities.

“(5) Activities authorized under the Safe and Drug-Free Schools program under part A of title IV.

“(6) Activities authorized under part A of title I.

“(7) Activities authorized under title III.

“(b) ADMINISTRATIVE COSTS.—A State educational agency receiving a grant under this subpart may not use more than 5 percent of the amount of the grant for State administrative costs and to provide technical assistance to eligible local educational agencies.

“SEC. 6223. APPLICATIONS.

“(a) IN GENERAL.—Each State educational agency or specially qualified agency desiring to receive a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

“(b) CONTENTS.—At a minimum, each application submitted under subsection (a) shall include information on specific measurable goals and objectives to be achieved through the activities carried out through the grant, which may include specific educational goals and objectives relating to—

“(1) increased student academic achievement;

“(2) decreased student dropout rates; or

“(3) such other factors as the State educational agency or specially qualified agency may choose to measure.

“SEC. 6224. ACCOUNTABILITY.

“(a) STATE REPORT.—Each State educational agency that receives a grant under this subpart shall prepare and submit an annual report to the Secretary. The report shall describe—

“(1) the method the State educational agency used to award grants to eligible local educational agencies, and to provide assistance to schools, under this subpart;

“(2) how local educational agencies and schools used funds provided under this subpart; and

“(3) the degree to which progress has been made toward meeting the goals and objectives described in the application submitted under section 6223.

“(b) SPECIALLY QUALIFIED AGENCY REPORT.—Each specially qualified agency that receives a grant under this subpart shall provide an annual report to the Secretary. Such report shall describe—

“(1) how such agency uses funds provided under this sub-part; and

“(2) the degree to which progress has been made toward meeting the goals and objectives described in the application submitted under section 6223.

“(c) REPORT TO CONGRESS.—The Secretary shall prepare and submit 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 a biennial report. The report shall describe—

“(1) the methods the State educational agencies used to award grants to eligible local educational agencies, and to provide assistance to schools, under this subpart;

“(2) how local educational agencies and schools used funds provided under this subpart; and

“(3) the degree to which progress has been made toward meeting the goals and objectives described in the applications submitted under section 6223.

“(d) **ACADEMIC ACHIEVEMENT ASSESSMENT.**—Each local educational agency or specially qualified agency that receives a grant under this subpart for a fiscal year shall administer an assessment that is consistent with section 1111(b)(3).

“(e) **DETERMINATION REGARDING CONTINUING PARTICIPATION.**— Each State educational agency or specially qualified agency that receives a grant under this subpart shall—

“(1) after the third year that a local educational agency or specially qualified agency in the State receives funds under this subpart, and on the basis of the results of the assessments described in subsection (d)—

“(A) in the case of a local educational agency, determine whether the local educational agency made adequate yearly progress, as described in section 1111(b)(2); and

“(B) in the case of a specially qualified agency, submit to the Secretary information that would allow the Secretary to determine whether the specially qualified agency has made adequate yearly progress, as described in section 1111(b)(2);

“(2) permit only those local educational agencies or specially qualified agencies that made adequate yearly progress, as described in section 1111(b)(2), to continue to receive grants under this subpart; and

“(3) permit those local educational agencies or specially qualified agencies that failed to make adequate yearly progress, as described in section 1111(b)(2), to continue to receive such grants only if the State educational agency disbursed such grants to the local educational agencies or specially qualified agencies to carry out the requirements of section 1116.

“Subpart 3—General Provisions

“SEC. 6231. ANNUAL AVERAGE DAILY ATTENDANCE DETERMINATION.

“(a) **CENSUS DETERMINATION.**—Each local educational agency desiring a grant under section 6212 and each local educational agency or specially qualified agency desiring a grant under subpart 2 shall—

“(1) not later than December 1 of each year, conduct a census to determine the number of students in average daily attendance in kindergarten through grade 12 at the schools served by the agency; and

“(2) not later than March 1 of each year, submit the number described in paragraph (1) to the Secretary (and to the State educational

agency, in the case of a local educational agency seeking a grant under subpart (2)).

“(b) **PENALTY.**—If the Secretary determines that a local educational agency or specially qualified agency has knowingly submitted false information under subsection (a) for the purpose of gaining additional funds under section 6212 or subpart 2, then the agency shall be fined an amount equal to twice the difference between the amount the agency received under this section and the correct amount the agency would have received under section 6212 or subpart 2 if the agency had submitted accurate information under subsection (a).

“SEC. 6232. SUPPLEMENT, NOT SUPPLANT.

“Funds made available under subpart 1 or subpart 2 shall be used to supplement, and not supplant, any other Federal, State, or local education funds.

“SEC. 6233. RULE OF CONSTRUCTION.

“Nothing in this part shall be construed to prohibit a local educational agency that enters into cooperative arrangements with other local educational agencies for the provision of special, compensatory, or other education services, pursuant to State law or a written agreement, from entering into similar arrangements for the use, or the coordination of the use, of the funds made available under this part.

“SEC. 6234. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this part \$300,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years, to be distributed equally between subparts 1 and 2.

“PART C—GENERAL PROVISIONS

“SEC. 6301. PROHIBITION AGAINST FEDERAL MANDATES, DIRECTION, OR CONTROL.

“Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school’s specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction, as a condition of eligibility to receive funds under this Act.

“SEC. 6302. RULE OF CONSTRUCTION ON EQUALIZED SPENDING.

“Nothing in this title shall be construed to mandate equalized spending per pupil for a State, local educational agency, or school.”

SEC. 602. AMENDMENT TO THE NATIONAL EDUCATION STATISTICS ACT OF 1994.

(a) NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS.—
Section 411 of the National Education Statistics Act of 1994 (20 U.S.C. 9010)
is amended to read as follows:

“SEC. 411. NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS.

“(a) ESTABLISHMENT.—The Commissioner shall, with the advice of
the National Assessment Governing Board established under section 412,
and with the technical assistance of the Advisory Council established under
section 407, carry out, through grants, contracts, or cooperative agreements
with one or more qualified organizations, or consortia thereof, a National
Assessment of Educational Progress, which collectively refers to a national
assessment, State assessments, and a long-term trend assessment in reading
and mathematics.

“(b) PURPOSE; STATE ASSESSMENTS.—

“(1) PURPOSE.—The purpose of this section is to provide, in a
timely manner, a fair and accurate measurement of student academic
achievement and reporting trends in such achievement in reading,
mathematics, and other subject matter as specified in this section.

“(2) MEASUREMENT AND REPORTING.—The Commissioner, in
carrying out the measurement and reporting described in paragraph (1),
shall—

“(A) use a random sampling process which is consistent with
relevant, widely accepted professional assessment standards and
that produces data that are representative on a national and
regional basis;

“(B) conduct a national assessment and collect and report
assessment data, including achievement data trends, in a valid and
reliable manner on student academic achievement in public and
private elementary schools and secondary schools at least once
every 2 years, in grades 4 and 8 in reading and mathematics;

“(C) conduct a national assessment and collect and report
assessment data, including achievement data trends, in a valid and
reliable manner on student academic achievement in public and
private schools in reading and mathematics in grade 12 in regularly
scheduled intervals, but at least as often as such assessments were
conducted prior to the date of enactment of the No Child Left
Behind Act of 2001;

“(D) to the extent time and resources allow, and after the
requirements described in subparagraph (B) are implemented and
the requirements described in subparagraph (C) are met, conduct
additional national assessments and collect and report assessment
data, including achievement data trends, in a valid and reliable
manner on student academic achievement in grades 4, 8, and 12 in
public and private elementary schools and secondary schools in
regularly scheduled intervals in additional subject matter, including

writing, science, history, geography, civics, economics, foreign
languages, and arts, and the trend assessment described in
subparagraph (F);

“(E) conduct the reading and mathematics assessments
described in subparagraph (B) in the same year, and every other
year thereafter, to provide for 1 year in which no such assessments
are conducted in between each administration
of such assessments;

“(F) continue to conduct the trend assessment of academic
achievement at ages 9, 13, and 17 for the purpose of maintaining
data on long-term trends in reading and mathematics;

“(G) include information on special groups, including, whenever
feasible, information collected, cross tabulated, compared, and
reported by race, ethnicity, socioeconomic status, gender, disability
and limited English proficiency; and

“(H) ensure that achievement data are made available on a
timely basis following official reporting, in a manner that facilitates
further analysis and that includes trend lines.

“(3) STATE ASSESSMENTS.—

“(A) IN GENERAL.—The Commissioner—

“(i) shall conduct biennial State academic assessments of
student achievement in reading and mathematics in grades 4
and 8 as described in paragraphs (1)(B) and (1)(E);

“(ii) may conduct the State academic assessments of
student achievement in reading and mathematics in grade 12
as described in paragraph (1)(C);

“(iii) may conduct State academic assessments of student
achievement in grades 4, 8, and 12 as described in paragraph
(1)(D); and

“(iv) shall conduct each such State assessment, in each
subject area and at each grade level, on a developmental basis
until the Commissioner determines, as the result of an
evaluation required by subsection (f), that such assessment
produces high quality data that are valid and reliable.

“(B) AGREEMENT.—

“(i) IN GENERAL.—States participating in State
assessments shall enter into an agreement with the Secretary
pursuant to subsection (d)(3).

“(ii) CONTENT.—Such agreement shall contain
information sufficient to give States full information about the
process for decision-making (which shall include the consensus
process used), on objectives to be tested, and the standards for
random sampling, test administration, test security, data
collection, validation, and reporting.

“(C) REVIEW AND RELEASE.—

“(i) IN GENERAL.—Except as provided in clause

(ii), a participating State shall review and give permission for the release of results from any test of its students administered as a part of a State assessment prior to the release of such data. Refusal by a State to release its data shall not restrict the release of data from other States that have approved the release of such data.

“(ii) SPECIAL RULE.—A State participating in the biennial academic assessments of student achievement in reading and mathematics in grades 4 and 8 shall be deemed to have given its permission to release its data if the State has an approved plan under section 1111 of the Elementary and Secondary Education Act of 1965.

“(4) PROHIBITED ACTIVITIES.—

“(A) IN GENERAL.—The use of assessment items and data on any assessment authorized under this section by an agent or agents of the Federal Government to rank, compare, or otherwise evaluate individual students or teachers, or to provide rewards or sanctions for individual students, teachers, schools or local educational agencies is prohibited.

“(B) SPECIAL RULE.—Any assessment authorized under this section shall not be used by an agent or agents of the Federal Government to establish, require, or influence the standards, assessments, curriculum, including lesson plans, textbooks, or classroom materials, or instructional practices of States or local educational agencies.

“(C) APPLICABILITY TO STUDENT EDUCATIONAL DECISIONS.—Nothing in this section shall be construed to prescribe the use of any assessment authorized under this section for student promotion or graduation purposes.

“(D) APPLICABILITY TO HOME SCHOOLS.—Nothing in this section shall be construed to affect home schools, whether or not a home school is treated as a home school or a private school under State law, nor shall any home schooled student be required to participate in any assessment referenced or authorized under this section.

“(5) REQUIREMENT.—In carrying out any assessment authorized under this section, the Commissioner, in a manner consistent with subsection (c)(2), shall—

“(A) use widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, and ensure that any academic assessment authorized under this section be tests that do not evaluate or assess personal or family

beliefs and attitudes or publicly disclose personally identifiable information;

“(B) only collect information that is directly related to the appraisal of academic achievement, and to the fair and accurate presentation of such information; and

“(C) collect information on race, ethnicity, socio-economic status, disability, limited English proficiency, and gender.

“(6) TECHNICAL ASSISTANCE.—In carrying out any assessment authorized under this section, the Commissioner may provide technical assistance to States, localities, and other parties.

“(c) ACCESS.—

“(1) PUBLIC ACCESS.—

“(A) IN GENERAL.—Except as provided in paragraph (3), parents and members of the public shall have access to all assessment data, questions, and complete and current assessment instruments of any assessment authorized under this section. The local educational agency shall make reasonable efforts to inform parents and members of the public about the access required under this paragraph.

“(B) TIMELINE.—The access described in this paragraph shall be provided within 45 days of the date the request was made, in writing, and be made available in a secure setting that is convenient to both parties.

“(C) PROHIBITION.—To protect the integrity of the assessment, no copy of the assessment items or assessment instruments shall be duplicated or taken from the secure setting.

“(2) COMPLAINTS.—

“(A) IN GENERAL.—Parents and members of the public may submit written complaints to the National Assessment Governing Board.

“(B) FORWARDING OF COMPLAINTS.—The National Assessment Governing Board shall forward such complaints to the Commissioner, the Secretary of Education, and the State and local educational agency from within which the complaint originated within 30 days of receipt of such complaint.

“(C) REVIEW.—The National Assessment Governing Board, in consultation with the Commissioner, shall review such complaint and determine whether revisions are necessary and appropriate. As determined by such review, the Board shall revise, as necessary and appropriate, the procedures or assessment items that have generated the complaint and respond to the individual submitting the complaint, with a copy of such response provided to the Secretary, describing any action taken, not later than 30 days after so acting.

“(D) REPORT.—The Secretary shall submit a summary report of all complaints received pursuant to subparagraph (A) and responses by the National Assessment Governing Board pursuant to subparagraph (B) to the Chairman of the House Committee on Education and the Workforce, and the Chairman of the Senate Committee on Health, Education, Labor, and Pensions.

“(E) COGNITIVE QUESTIONS.—

“(i) IN GENERAL.—The Commissioner may decline to make available through public means, such as posting on the Internet, distribution to the media, distribution through public agencies, or in response to a request under section 552 of title 5, United States Code, for a period, not to exceed 10 years after initial use, cognitive questions that the Commissioner intends to reuse in the future.

“(ii) EXTENSION.—Notwithstanding clause (i), the Commissioner may decline to make cognitive questions available as described in clause (i) for a period longer than 10 years if the Commissioner determines such additional period is necessary to protect the security and integrity of long-term trend data.

“(3) PERSONALLY IDENTIFIABLE INFORMATION.—

“(A) IN GENERAL.—The Commissioner shall ensure that all personally identifiable information about students, their academic achievement, and their families, and that information with respect to individual schools, remains confidential, in accordance with section 552a of title 5, United States Code.

“(B) PROHIBITION.—The National Board, the Commissioner, and any contractor or subcontractor shall not maintain any system of records containing a student’s name, birth information, Social Security number, or parents’ name or names, or any other personally identifiable information.

“(4) PENALTIES.—Any unauthorized person who knowingly discloses, publishes, or uses assessment questions, or complete and current assessment instruments of any assessment authorized under this section may be fined as specified in section 3571 of title 18, United States Code or charged with a class E felony.

“(d) PARTICIPATION.—

“(1) VOLUNTARY PARTICIPATION.—Participation in any assessment authorized under this section shall be voluntary for students, schools, and local educational agencies.

“(2) STUDENT PARTICIPATION.—Parents of children selected to participate in any assessment authorized under this section shall be informed before the administration of any authorized assessment, that their child may be excused from participation for any reason, is not

required to finish any authorized assessment, and is not required to answer any test question.

“(3) STATE PARTICIPATION.—

“(A) VOLUNTARY.—Participation in assessments authorized under this section, other than reading and mathematics in grades 4 and 8, shall be voluntary.

“(B) AGREEMENT.—For reading and mathematics assessments in grades 4 and 8, the Secretary shall enter into an agreement with any State carrying out an assessment for the State under this section. Each such agreement shall contain provisions designed to ensure that the State will participate in the assessment.

“(4) REVIEW.—Representatives of State educational agencies and local educational agencies or the chief State school officer shall have the right to review any assessment item or procedure of any authorized assessment upon request in a manner consistent with subsection (c), except the review described in subparagraph (2)(C) of subsection (c) shall take place in consultation with the representatives described in this paragraph.

“(e) STUDENT ACHIEVEMENT LEVELS.—

“(1) ACHIEVEMENT LEVELS.—The National Assessment Governing Board shall develop appropriate student achievement levels for each grade or age in each subject area to be tested under assessments authorized under this section, except the trend assessment described in subsection (b)(2)(F).

“(2) DETERMINATION OF LEVELS.—

“(A) IN GENERAL.—Such levels shall—

“(i) be determined by—

“(I) identifying the knowledge that can be measured and verified objectively using widely accepted professional assessment standards; and

“(II) developing achievement levels that are consistent with relevant widely accepted professional assessment standards and based on the appropriate level of subject matter knowledge for grade levels to be assessed, or the age of the students, as the case may be.

“(B) NATIONAL CONSENSUS APPROACH.—After the determinations described in subparagraph (A), devising a national consensus approach.

“(C) TRIAL BASIS.—The achievement levels shall be used on a trial basis until the commissioner determines, as a result of an evaluation under subsection (f), that such levels are reasonable, valid, and informative to the public.

“(D) STATUS.—The Commissioner and the Board shall ensure that reports using such levels on a trial basis do so in a manner that makes clear the status of such levels.

“(E) UPDATES.—Such levels shall be updated as appropriate by the National Assessment Governing Board in consultation with the Commissioner.

“(3) REPORTING.—After determining that such levels are reasonable, valid, and informative to the public, as the result of an evaluation under subsection (f), the Commissioner shall use such levels or other methods or indicators for reporting results of the National Assessment and State assessments.

“(4) REVIEW.—The National Assessment Governing Board shall provide for a review of any trial student achievement levels under development by representatives of State educational agencies or the chief State school officer in a manner consistent with subsection (c), except the review described in subparagraph (2)(C) shall take place in consultation with the representatives described in this paragraph.

“(f) REVIEW OF NATIONAL AND STATE ASSESSMENTS.—

“(1) REVIEW.—

“(A) IN GENERAL.—The Secretary shall provide for continuing review of any assessment authorized under this section, and student achievement levels, by one or more professional assessment evaluation organizations.

“(B) ISSUES ADDRESSED.—Such continuing review shall address—

“(i) whether any authorized assessment is properly administered, produces high quality data that are valid and reliable, is consistent with relevant widely accepted professional assessment standards, and produces data on student achievement that are not otherwise available to the State (other than data comparing participating States to each other and the Nation);

“(ii) whether student achievement levels are reasonable, valid, reliable, and informative to the public;

“(iii) whether any authorized assessment is being administered as a random sample and is reporting the trends in academic achievement in a valid and reliable manner in the subject areas being assessed;

“(iv) whether any of the test questions are biased, as described in section 412(e)(4); and

“(v) whether the appropriate authorized assessments are measuring, consistent with this section, reading ability and mathematical knowledge.

“(2) REPORT.—The Secretary shall report 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, the President, and the Nation on the findings and recommendations of such reviews.

“(3) USE OF FINDINGS AND RECOMMENDATIONS.—The Commissioner and the National Assessment Governing Board shall consider the findings and recommendations of such reviews in designing the competition to select the organization, or organizations, through which the Commissioner carries out the National Assessment.

“(g) COVERAGE AGREEMENTS.—

“(1) DEPARTMENT OF DEFENSE SCHOOLS.—The Secretary and the Secretary of Defense may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment elementary schools and secondary schools operated by the Department of Defense.

“(2) BUREAU OF INDIAN AFFAIRS SCHOOLS.—The Secretary and the Secretary of the Interior may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment schools for Indian children operated or supported by the Bureau of Indian Affairs.”.

(b) NATIONAL ASSESSMENT GOVERNING BOARD.—Section 412 of the National Education Statistics Act of 1994 (20 U.S.C. 9011) is amended to read as follows:

“SEC. 412. NATIONAL ASSESSMENT GOVERNING BOARD.

“(a) ESTABLISHMENT.— There is established the National Assessment Governing Board (hereafter in this title referred to as the ‘Board’), which shall formulate policy guidelines for the National Assessment.

“(b) MEMBERSHIP.—

“(1) APPOINTMENT AND COMPOSITION.—The Board shall be appointed by the Secretary and be composed as follows:

“(A) Two Governors, or former Governors, who shall not be members of the same political party.

“(B) Two State legislators, who shall not be members of the same political party.

“(C) Two chief State school officers.

“(D) One superintendent of a local educational agency.

“(E) One member of a State board of education.

“(F) One member of a local board of education.

“(G) Three classroom teachers representing the grade levels at which the National Assessment is conducted.

“(H) One representative of business or industry.

“(I) Two curriculum specialists.

“(J) Three testing and measurement experts, who shall have training and experience in the field of testing and measurement.

“(K) One nonpublic school administrator or policy-maker.

“(L) Two school principals, of whom one shall be an elementary school principal and one shall be a secondary school principal.

“(M) Two parents who are not employed by a local, State or Federal educational agency.

“(N) Two additional members who are representatives of the general public, and who may be parents, but who are not employed by a local, State, or Federal educational agency.

“(2) ASSISTANT SECRETARY FOR EDUCATIONAL RESEARCH.— The Assistant Secretary for Educational Research and Improvement shall serve as an ex officio, nonvoting member of the Board.

“(3) BALANCE AND DIVERSITY.—The Secretary and the Board shall ensure at all times that the membership of the Board reflects regional, racial, gender, and cultural balance and diversity and that the Board exercises its independent judgment, free from inappropriate influences and special interests.

“(c) TERMS.—

“(1) IN GENERAL.—Terms of service of members of the Board shall be staggered and may not exceed a period of 4 years, as determined by the Secretary.

“(2) SERVICE LIMITATION.—Members of the Board may serve not more than two terms.

“(3) CHANGE OF STATUS.—A member of the Board who changes status under subsection (b) during the term of the appointment of the member may continue to serve as a member until the expiration of such term.

“(4) CONFORMING PROVISION.—Members of the Board previously granted 3 year terms, whose terms are in effect on the date of enactment of the Department of Education Appropriations Act, 2001, shall have their terms extended by 1 year.

“(d) VACANCIES.—

“(1) IN GENERAL.—

“(A) ORGANIZATIONS.—The Secretary shall appoint new members to fill vacancies on the Board from among individuals who are nominated by organizations representing the type of individuals described in subsection (b)(1) with respect to which the vacancy exists.

“(B) NOMINATIONS.—Each organization submitting nominations to the Secretary with respect to a particular vacancy shall nominate for such vacancy six individuals who are qualified by experience or training to fill the particular Board vacancy.

“(C) MAINTENANCE OF BOARD.—The Secretary’s appointments shall maintain the composition, diversity, and balance of the Board required under subsection (b).

“(2) ADDITIONAL NOMINATIONS.—The Secretary may request that each organization described in paragraph (1)(A) submit additional nominations if the Secretary determines that none of the individuals nominated by such organization have appropriate knowledge or expertise.

“(e) DUTIES.—

“(1) IN GENERAL.—In carrying out its functions under this section the Board shall—

“(A) select the subject areas to be assessed (consistent with section 411(b));

“(B) develop appropriate student achievement levels as provided in section 411(e);

“(C) develop assessment objectives consistent with the requirements of this section and test specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards;

“(D) develop a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public;

“(E) design the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys, including the Advisory Council established under section 407;

“(F) consistent with section 411, measure student academic achievement in grades 4, 8, and 12 in the authorized academic subjects;

“(G) develop guidelines for reporting and disseminating results;

“(H) develop standards and procedures for regional and national comparisons; and

“(I) take appropriate actions needed to improve the form, content, use, and reporting of results of any assessment authorized by section 411 consistent with the provisions of this section and section 411.

“(2) DELEGATION.—The Board may delegate any of the Board’s procedural and administrative functions to its staff.

“(3) ALL COGNITIVE AND NONCOGNITIVE ASSESSMENT ITEMS.—The Board shall have final authority on the appropriateness of all assessment items.

“(4) PROHIBITION AGAINST BIAS.—The Board shall take steps to ensure that all items selected for use in the National Assessment are free from racial, cultural, gender, or regional bias and are secular, neutral, and non-ideological.

“(5) TECHNICAL.—In carrying out the duties required by paragraph (1), the Board may seek technical advice, as appropriate, from the Commissioner and the Advisory Council on Education Statistics and other experts.

“(6) REPORT.—Not later than 90 days after an evaluation of the student achievement levels under section 411(e), the Board shall make a report to the Secretary, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate describing the steps the Board is taking to respond to each of the recommendations contained in such evaluation.

“(f) PERSONNEL.—

“(1) IN GENERAL.—In the exercise of its responsibilities, the Board shall be independent of the Secretary and the other offices and officers of the Department.

“(2) STAFF.—

“(A) IN GENERAL.—The Secretary may appoint, at the request of the Board, such staff as will enable the Board to carry out its responsibilities.

“(B) TECHNICAL EMPLOYEES.—Such appointments may include, for terms not to exceed 3 years and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, not more than six technical employees who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

“(g) COORDINATION.—The Commissioner and the Board shall meet periodically—

“(1) to ensure coordination of their duties and activities relating to the National Assessment; and

“(2) for the Commissioner to report to the Board on the Department’s actions to implement the decisions of the Board.

“(h) ADMINISTRATION.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Board, other than sections 10, 11, and 12 of such Act.”.