

**AMENDMENT TO H.R. 1, AS REPORTED  
OFFERED BY MR. DEMINT OF SOUTH CAROLINA**

At the end of the provision proposed to be added by section 701 of the bill, add the following:

1           **“PART C—PERFORMANCE AGREEMENTS**

2           **“SEC. 7301. SHORT TITLE.**

3           “This part may be cited as the ‘Performance Agree-  
4 ments Act’.

5           **“SEC. 7302. PURPOSE.**

6           “‘The purpose of this part is to create options for se-  
7 lected State educational agencies and local educational  
8 agencies—

9                   “(1) to improve the academic achievement of all  
10           students served by State educational agencies and  
11           local educational agencies, and to focus the resources  
12           of the Federal Government on that achievement;

13                   “(2) to better empower parents, educators, ad-  
14           ministrators, and schools to effectively address the  
15           needs of their children and students;

16                   “(3) to give participating State educational  
17           agencies and local educational agencies greater flexi-  
18           bility in determining how to increase their students’  
19           academic achievement and implement education re-  
20           forms in their schools;



1 “(4) to eliminate barriers to implementing ef-  
2 fective State and local education reform, while pre-  
3 serving the goals of equality of opportunity for all  
4 students and accountability for student progress;

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

9 “(6) to narrow achievement gaps between the  
10 lowest and highest performing groups of students,  
11 particularly low-income and minority students, so  
12 that no child is left behind.

13 **“SEC. 7303. PROGRAM AUTHORITY; SELECTION OF STATE**  
14 **EDUCATIONAL AGENCIES AND LOCAL EDU-**  
15 **CATIONAL AGENCIES.**

16 “(a) PROGRAM AUTHORITY.—

17 “(1) IN GENERAL.—Except as otherwise pro-  
18 vided in this part, the Secretary shall enter into per-  
19 formance agreements—

20 “(A) with State educational agencies and  
21 local educational agencies that submit approv-  
22 able performance agreement proposals and are  
23 selected under paragraph (2); and



1           “(B) under which the agencies may con-  
2           solidate and use funds as described in section  
3           7305.

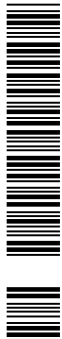
4           “(2) SELECTION OF STATE EDUCATIONAL  
5           AGENCIES AND LOCAL EDUCATIONAL AGENCIES FOR  
6           PARTICIPATION.—

7           “(A) IN GENERAL.—Subject to subpara-  
8           graphs (C) and (D), the Secretary shall select  
9           not more than 7 State educational agencies and  
10          25 local educational agencies to enter into per-  
11          formance agreements under this part. The  
12          State educational agencies and local educational  
13          agencies shall be selected from among those  
14          State educational agencies and local educational  
15          agencies that—

16                   “(i) demonstrate, to the satisfaction  
17                   of the Secretary, that the proposed per-  
18                   formance agreement of the agency—

19                           “(I) has substantial promise of  
20                           meeting the requirements of this part;  
21                           and

22                                   “(II) describes a plan to combine  
23                                   and use funds (as described in section  
24                                   7305(a)(1)) under the agreement to  
25                                   exceed, by a statistically significant



1 amount, the State's definition of ade-  
2 quate yearly progress (as described in  
3 subparagraph (B)) while meeting the  
4 requirements of sections 1111 and  
5 1116;

6 “(ii) have developed, and are admin-  
7 istering, the assessments described in sec-  
8 tion 1111(b)(4);

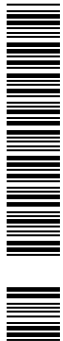
9 “(iii) provide information in the pro-  
10 posed performance agreement regarding  
11 how the State educational agency—

12 “(I) has notified the local edu-  
13 cational agencies within the State of  
14 the State educational agency's intent  
15 to submit a proposed performance  
16 agreement; and

17 “(II) consulted with the Governor  
18 of the State about the terms of the  
19 proposed performance agreement;

20 “(iv) consulted and involved parents  
21 and educators in the development of the  
22 proposal; and

23 “(v) provide such other information,  
24 at such time and in such manner, as the  
25 Secretary may reasonably require.



1           “(B) DEFINITION OF ADEQUATE YEARLY  
2 PROGRESS.—In this part the term ‘adequate  
3 yearly progress’ means the adequate yearly  
4 progress determined by the State pursuant to  
5 section 1111(b)(2)(C).

6           “(C) GEOGRAPHIC DISTRIBUTION.—If  
7 more than 7 State educational agencies or 25  
8 local educational agencies submit approvable  
9 performance agreements under this part, then  
10 the Secretary shall select agencies for perform-  
11 ance agreements under this part in a manner  
12 that ensures, to the greatest extent possible, an  
13 equitable geographic distribution of such agen-  
14 cies selected for performance agreements. In  
15 addition, if more than 25 local educational  
16 agencies submit approvable performance agree-  
17 ments under this part, then the Secretary shall  
18 select local educational agencies for perform-  
19 ance agreements under this part in a manner  
20 that ensures an equitable distribution of such  
21 agencies selected for performance agreements  
22 among such agencies serving urban and rural  
23 areas.

24           “(D) LOCAL EDUCATIONAL AGENCY PAR-  
25 TICIPATION.—



1           “(i) IN GENERAL.—If a local edu-  
2           cational agency is located in a State that  
3           does not enter into a performance agree-  
4           ment under subparagraph (A), then the  
5           local educational agency may be selected to  
6           enter into a performance agreement with  
7           the Secretary under subparagraph (A), but  
8           only if the local educational agency—

9                   “(I) meets the requirements of  
10                  this part that are applicable to the  
11                  local educational agency pursuant to  
12                  clause (iii), except as provided under  
13                  clause (v);

14                   “(II) notifies the State edu-  
15                  cational agency of the local edu-  
16                  cational agency’s intent to enter into  
17                  a performance agreement under this  
18                  part; and

19                   “(III) notifies the Governor of  
20                  the State regarding the terms of the  
21                  proposed performance agreement.

22           “(ii) PROHIBITION.—In the event that  
23           a local educational agency enters into a  
24           performance agreement under this part,  
25           the State educational agency serving the



1 State in which the local educational agency  
2 is located may not enter into a perform-  
3 ance agreement under this part unless—

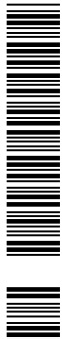
4 “(I) the State educational agency  
5 has consulted the local educational  
6 agency; and

7 “(II) the term of the local edu-  
8 cational agency’s original performance  
9 agreement has ended.

10 “(iii) APPLICABILITY.—Except as pro-  
11 vided in clauses (iv) and (v), each require-  
12 ment and limitation under this part that is  
13 applicable to a State educational agency  
14 with respect to a performance agreement  
15 under this part shall be applicable to a  
16 local educational agency with respect to a  
17 performance agreement under this section,  
18 to the extent the Secretary determines ap-  
19 propriate.

20 “(iv) LOCAL EDUCATIONAL AGENCY  
21 WAIVER.—

22 “(I) WAIVER.—If a local edu-  
23 cational agency does not wish to par-  
24 ticipate in the State educational agen-  
25 cy’s performance agreement, then the



1 local educational agency shall apply to  
2 the State educational agency for a  
3 waiver within 45 days of notification  
4 from the State educational agency of  
5 the State educational agency's desire  
6 to participate in a performance agree-  
7 ment.

8 “(II) RESPONSE.—A State edu-  
9 cational agency that receives a waiver  
10 application under subclause (I) shall  
11 respond to the waiver application  
12 within 45 days of receipt of the appli-  
13 cation. In order to obtain the waiver,  
14 the local educational agency shall rea-  
15 sonably demonstrate to the State edu-  
16 cational agency that the local edu-  
17 cational agency would be better able  
18 to exceed adequate yearly progress by  
19 opting out of the performance agree-  
20 ment and remaining subject to the re-  
21 quirements of the affected Federal  
22 programs. If the State educational  
23 agency denies the waiver, the State  
24 educational agency shall explain to the  
25 local educational agency the State





1 educational agency's reasons for the  
2 denial.

3 “(III) APPLICABILITY.—If a local  
4 educational agency receives a waiver  
5 under this clause, then the agency  
6 shall receive funds and be subject to  
7 the provisions of Federal law gov-  
8 erning each Federal program included  
9 in the State educational agency's per-  
10 formance agreement.

11 “(v) INAPPLICABILITY.—The fol-  
12 lowing provisions shall not apply to a local  
13 educational agency with respect to a per-  
14 formance agreement under this part:

15 “(I) The provisions of section  
16 7303(a)(2)(A)(iii) relating to State  
17 educational agency information.

18 “(II) The provisions of section  
19 7304(a)(3)(B) limiting the use of  
20 funds other than those funds provided  
21 under part A of title I.

22 “(III) The provisions of section  
23 7305(b), to the extent that those pro-  
24 visions permit the consolidation of



1 funds that are awarded by a State on  
2 a competitive basis.

3 “(IV) The provisions relating to  
4 distribution of funds under section  
5 7306.

6 “(V) The provisions limiting  
7 State use of funds for administrative  
8 purposes under section 7308(a).

9 “(VI) The provisions of section  
10 7309(e)(1) regarding State sanctions.

11 “(b) ED-FLEX PROHIBITION.—Each State or local  
12 educational agency that enters into a performance agree-  
13 ment under this part shall be ineligible to receive a waiver  
14 under the Education Flexibility Partnership Act of 1999  
15 for the term of the performance agreement.

16 **“SEC. 7304. PERFORMANCE AGREEMENT.**

17 “(a) TERMS OF PERFORMANCE AGREEMENT.—

18 “(1) REQUIRED PROVISIONS.—Each perform-  
19 ance agreement entered into by the Secretary and a  
20 State educational agency or a local educational agen-  
21 cy under this part shall—

22 “(A) be for a term of 5 years, except as  
23 provided in section 7309(a);

24 “(B) provide that no requirements of any  
25 program described in section 7305(b) and in-



1           cluded in the scope of the agreement shall  
2           apply, except as otherwise provided in this part;

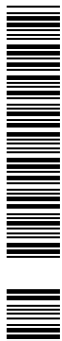
3           “(C) list which of the programs described  
4           in section 7305(b) are included in the scope of  
5           the performance agreement;

6           “(D) contain a 5-year plan describing how  
7           the State educational agency will—

8           “(i) ensure compliance with sections  
9           1003, 1111 (other than subsections (c)(3)  
10          and (c)(10)), 1112 (other than subsections  
11          (b)(3), (c)(1)(E), and (c)(1)(H)), 1114,  
12          1115, 1116, 1117, 1118(c), 1118(d),  
13          1118(e)(1), 1118(e)(3), and 1118(e)(7),  
14          except that section 1114(b)(1) shall be ap-  
15          plied substituting ‘35 percent’ for ‘40 per-  
16          cent’;

17          “(ii) address professional development  
18          under the performance agreement;

19          “(iii) combine and use the funds from  
20          programs included in the scope of the per-  
21          formance agreement to exceed, by a statis-  
22          tically significant amount, the State’s defi-  
23          nition of adequate yearly progress; and



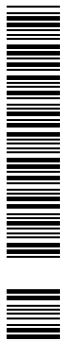
1                   “(iv) if title II is included in the per-  
2                   formance agreement, ensure compliance  
3                   with section 1119(a)(2) as applicable;

4                   “(E) contain an assurance that the State  
5                   educational agency has provided parents, teach-  
6                   ers, schools, and local educational agencies in  
7                   the State, with notice and an opportunity to  
8                   comment on the proposed terms of the perform-  
9                   ance agreement, including the distribution and  
10                  use of funds to be consolidated, in accordance  
11                  with State law;

12                  “(F) provide that the State educational  
13                  agency will use fiscal control and fund-account-  
14                  ing procedures that will ensure proper disburse-  
15                  ment of, and accounting for, Federal funds con-  
16                  solidated and used under the performance  
17                  agreement;

18                  “(G) contain an assurance that the State  
19                  educational agency will meet the requirements  
20                  of all applicable Federal civil rights laws in car-  
21                  rying out the performance agreement and in  
22                  consolidating and using the funds under the  
23                  performance agreement;

24                  “(H) require that, in consolidating and  
25                  using funds under the performance agreement,

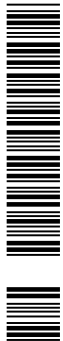


1 the State educational agency will comply with  
2 the equitable participation requirements de-  
3 scribed in section 7305(c);

4 “(I) provide that the State educational  
5 agency will, for the duration of the performance  
6 agreement, use funds consolidated and used  
7 under section 7305 only to supplement the  
8 amount of funds that would, in the absence of  
9 those Federal funds, be made available from  
10 non-Federal sources for the education of stu-  
11 dents participating in programs assisted with  
12 the consolidated funds and used under section  
13 7305, and not to supplant those funds;

14 “(J) contain an assurance that the State  
15 educational agency will comply with the mainte-  
16 nance of effort requirements of paragraph (2);

17 “(K) provide that, not later than 1 year  
18 after the date on which the Secretary and the  
19 State educational agency enter into the per-  
20 formance agreement, and annually thereafter  
21 during the term of the agreement, the State  
22 educational agency will disseminate widely to  
23 parents (in a format and, to the extent prac-  
24 ticable, in a language the parents can under-  
25 stand) and the general public, transmit to the



1 Secretary, distribute to print and broadcast  
2 media, and post on the Internet, a report that  
3 includes—

4 “(i) the data as described in section  
5 1111(h);

6 “(ii) a detailed description of how the  
7 State educational agency used the funds  
8 consolidated under the performance agree-  
9 ment to exceed, by a statistically signifi-  
10 cant amount, its definition of adequate  
11 yearly progress; and

12 “(iii) whether the State educational  
13 agency has met the teacher quality goals  
14 established under section 1119(a)(2); and

15 “(L) in the case of an agency that includes  
16 part A of title V in its performance agreement,  
17 contain an assurance that—

18 “(i) the agency will not diminish its  
19 ability to provide a drug and violence free  
20 learning environment as a result of enter-  
21 ing into the performance agreement, except  
22 that nothing in this clause shall be con-  
23 strued to limit the ability of the agency to  
24 participate in a program under part A title



1 V due to an unforeseen event involving  
2 drugs or violence;

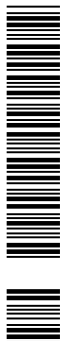
3 “(ii) the agency will prepare the needs  
4 assessment described in section  
5 5115(a)(1)(A) and the report described in  
6 section 5116 (b) and (c), as appropriate,  
7 for each school year; and

8 “(iii) the agency will use the informa-  
9 tion in the assessment and report de-  
10 scribed in clause (ii) to ensure compliance  
11 with clause (i).

12 “(2) MAINTENANCE OF STATE FINANCIAL SUP-  
13 PORT.—

14 “(A) IN GENERAL.—Each State entering  
15 into a performance agreement under this part  
16 shall not reduce the amount of State financial  
17 support for education for a fiscal year below the  
18 amount of such support for the preceding fiscal  
19 year.

20 “(B) REDUCTION OF FUNDS FOR FAILURE  
21 TO MAINTAIN EFFORT.—The Secretary shall re-  
22 duce the allotment of funds to a State pursuant  
23 to the terms of the performance agreement for  
24 any fiscal year following a fiscal year in which  
25 the State fails to comply with subparagraph (A)



1 by the same amount by which the State fails to  
2 meet the requirements of subparagraph (A).

3 “(C) WAIVERS FOR EXCEPTIONAL OR UN-  
4 CONTROLLABLE CIRCUMSTANCES.—The Sec-  
5 retary may waive the requirement of subpara-  
6 graph (A) for a State, for one fiscal year at a  
7 time, if the Secretary determines that granting  
8 a waiver would be equitable due to exceptional  
9 or uncontrollable circumstances such as a nat-  
10 ural disaster or a precipitous and unforeseen  
11 decline in the financial resources of the State.

12 “(D) SUBSEQUENT YEARS.—If, for any  
13 year, a State fails to meet the requirement of  
14 subparagraph (A), including any year for which  
15 the State is granted a waiver under subpara-  
16 graph (C), then the financial support required  
17 of the State in future years under subpara-  
18 graph (A) shall be the amount that would have  
19 been required in the absence of that failure and  
20 not the reduced level of the State’s support.

21 “(3) MAINTENANCE OF LOCAL FINANCIAL SUP-  
22 PORT.—

23 “(A) IN GENERAL.—Each local educational  
24 agency entering into a performance agreement  
25 under this part shall not reduce the amount of

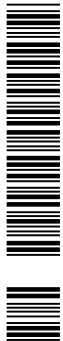




1 local educational agency financial support for  
2 education for a fiscal year below 90 percent of  
3 the amount of that support for the preceding  
4 fiscal year.

5 “(B) REDUCTION OF FUNDS FOR FAILURE  
6 TO MAINTAIN SUPPORT.—The Secretary shall  
7 reduce the amount made available to a local  
8 educational agency under a performance agree-  
9 ment under this part for any fiscal year fol-  
10 lowing the fiscal year in which the local edu-  
11 cational agency fails to comply with subpara-  
12 graph (A) by the same amount by which the  
13 local educational agency fails to meet the re-  
14 quirements of subparagraph (A).

15 “(C) WAIVERS FOR EXCEPTIONAL OR UN-  
16 CONTROLLABLE CIRCUMSTANCES.—The Sec-  
17 retary may waive the requirement of subpara-  
18 graph (A) for a local educational agency if the  
19 Secretary determines that granting a waiver  
20 would be equitable due to exceptional or uncon-  
21 trollable circumstances such as a natural dis-  
22 aster or a precipitous and unforeseen decline in  
23 the financial resources of the local educational  
24 agency, or to permit the local educational agen-  
25 cy to adjust for changes in student population



1 within the schools served by the local edu-  
2 cational agency.

3 “(D) SUBSEQUENT YEARS.—If, for any  
4 year, a local educational agency fails to meet  
5 the requirement of subparagraph (A), including  
6 any year for which the local educational agency  
7 is granted a waiver under subparagraph (C),  
8 then the financial support required of the local  
9 educational agency in future years under sub-  
10 subparagraph (A) shall be the amount that would  
11 have been required in the absence of that fail-  
12 ure and not the reduced level of the local edu-  
13 cational agency’s support.

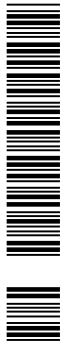
14 “(4) PROGRAM-SPECIFIC PROVISIONS.—

15 “(A) PART A OF TITLE I FUNDS.—If part  
16 A of title I is included in the scope of the per-  
17 formance agreement, the performance agree-  
18 ment shall provide that sections 1113, and  
19 1124 through 1127, shall apply to the alloca-  
20 tion of funds under such part, unless the State  
21 educational agency demonstrates, to the satis-  
22 faction of the Secretary and prior to approval  
23 of the performance agreement, that the State  
24 educational agency will use an alternative allo-  
25 cation method that will better target poverty or



1 educational need. Any alternative method shall  
2 result in the percentage of such funds allocated  
3 to each local educational agency served by the  
4 State educational agency that meets the eligi-  
5 bility criteria for a concentration grant accord-  
6 ing to section 1124A exceeding the percentage  
7 of such funds allocated to such local educational  
8 agency under part A of title I. Such alternative  
9 allocation methods may include implementation  
10 of a State's weighted formula, use of a State's  
11 most current census data to better target poor  
12 children, or a State setting higher thresholds  
13 for poverty so that funding is more targeted to  
14 schools with higher concentrations of poverty.

15 “(B) NONTITLE I FUNDS.—The perform-  
16 ance agreement shall provide that, for funds  
17 other than those under part A of title I that are  
18 consolidated and used under section 7305(b),  
19 the State educational agency will demonstrate,  
20 to the satisfaction of the Secretary and prior to  
21 approval of the performance agreement, that  
22 the State educational agency will allocate the  
23 funds in a manner that ensures that the pro-  
24 portion of funds that are allocated to local edu-  
25 cational agencies in the State based on poverty



1           are equal to or greater than the proportion of  
 2           funds allocated on such basis without such con-  
 3           solidation or use.

4           “(b) APPROVAL OF PERFORMANCE AGREEMENT.—

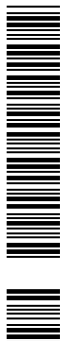
5           “(1) IN GENERAL.—Subject to section 7303(a),  
 6           not later than 90 days after the deadline established  
 7           by the Secretary for receipt of a complete proposed  
 8           performance agreement, the Secretary shall approve  
 9           the performance agreement, or provide the State  
 10          educational agency with a written explanation for  
 11          not approving the performance agreement.

12          “(2) PEER REVIEW.—The Secretary shall—

13           “(A) establish a peer review process to as-  
 14           sist in the review of proposed performance  
 15           agreements under this part; and

16           “(B) appoint individuals to the peer review  
 17           process who are representative of parents,  
 18           teachers, State educational agencies, and local  
 19           educational agencies, and who are familiar with  
 20           educational standards, assessments, account-  
 21           ability, curriculum, instruction and staff devel-  
 22           opment, and other diverse educational needs of  
 23           students.

24          “(c) AMENDMENT TO PERFORMANCE AGREEMENT.—



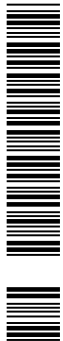
1           “(1) IN GENERAL.—Not later than 1 year after  
2 entering into a performance agreement under this  
3 part, a State educational agency may amend its  
4 agreement to—

5           “(A) remove from the scope of the agree-  
6 ment any program described in section 7305(b);  
7 or

8           “(B) include in the scope of the agreement  
9 any additional program described in section  
10 7305(b), or any additional achievement indica-  
11 tors for which the State educational agency will  
12 be held accountable.

13           “(2) APPROVAL OF AMENDMENT.—

14           “(A) IN GENERAL.—Not later than 90  
15 days after the receipt of a complete proposed  
16 amendment described in paragraph (1), the  
17 Secretary shall approve the amendment unless  
18 the Secretary, by that deadline, provides the  
19 State educational agency with a written deter-  
20 mination that the plan, as amended, would no  
21 longer have substantial promise of meeting the  
22 requirements of this part and meeting the State  
23 educational agency’s objective to exceed ade-  
24 quate yearly progress.



1           “(B) TREATMENT AS APPROVED.—Each  
2           amendment for which the Secretary fails to  
3           take the action required under subparagraph  
4           (A) in the time period described in that sub-  
5           paragraph shall be considered to be approved.

6           “(3) ADDITIONAL AMENDMENTS.—In addition  
7           to the amendments described in paragraph (1), the  
8           State educational agency, at any time, may amend  
9           its performance agreement if the State educational  
10          agency demonstrates, to the satisfaction of the Sec-  
11          retary, that—

12           “(A) the plan, as amended, will continue to  
13           have substantial promise of meeting the re-  
14           quirements of this part; and

15           “(B) the amendment sought by the State  
16           will not substantially alter the original agree-  
17           ment.

18           “(4) TREATMENT OF PROGRAM FUNDS WITH-  
19          DRAWN FROM AGREEMENT.—The addition, or re-  
20          moval, of a program to or from the scope of a per-  
21          formance agreement under paragraph (1) shall take  
22          effect with respect to the participating agency’s use  
23          of funds made available under that program begin-  
24          ning on the first day of the first full academic year  
25          following the approval of the amendment.



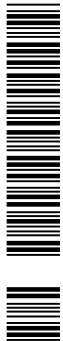
1 **“SEC. 7305. CONSOLIDATION AND USE OF FUNDS.**

2 “(a) IN GENERAL.—

3 “(1) AUTHORITY.—Under a performance agree-  
4 ment entered into under this part, a State edu-  
5 cational agency may consolidate, subject to sub-  
6 section (c), Federal funds made available to the  
7 State educational agency under the provisions listed  
8 in subsection (b) and use those funds for any pur-  
9 pose or use permitted under any of the eligible pro-  
10 grams listed in section 7305(b), subject to para-  
11 graph (3).

12 “(2) PROGRAM REQUIREMENTS.—Except as  
13 otherwise provided in this part, a State educational  
14 agency may use funds under paragraph (1) notwith-  
15 standing the requirements of the program under  
16 which the funds were made available to the State  
17 educational agency.

18 “(3) CONTINUATION AWARDS.—A State edu-  
19 cational agency shall make continuation awards for  
20 the duration of the grants to recipients of multiyear  
21 competitive grants under any of the programs de-  
22 scribed in subsection (b) that were initially awarded  
23 prior to entering into the performance agreement,  
24 and shall not consolidate any funds under subsection  
25 (b) for any year until after those continuation  
26 awards are made.



1           “(b) ELIGIBLE PROGRAMS.—Only funds made avail-  
2 able for fiscal year 2002 or any succeeding fiscal year to  
3 State educational agencies under programs under any of  
4 the following provisions of law may be consolidated and  
5 used under subsection (a):

6           “(1) Part A (other than section 1003), subpart  
7 3 of part B, or part F of title I.

8           “(2) Subpart 1 or 3 of part A of title II.

9           “(3) Part A of title III.

10          “(4) Subpart 1 of part A of title IV.

11          “(5) Part A or B of title V.

12          “(6) Any other program under this Act that is  
13 enacted after the date of enactment of the No Child  
14 Left Behind Act of 2001 under which the Secretary  
15 provides grants to State educational agencies to as-  
16 sist elementary and secondary education on the basis  
17 of a formula.

18          “(c) EQUITABLE PARTICIPATION REQUIREMENTS.—  
19 If a State educational agency or local educational agency  
20 includes in the scope of its performance agreement pro-  
21 grams described in subsection (b) that have requirements  
22 relating to the equitable participation of private schools,  
23 then—

24           “(1) each local educational agency in the State,  
25 or the local educational agency, as appropriate, shall





1 determine the amount of consolidated funds to be  
2 used for services and benefits for private school stu-  
3 dents and teachers by—

4 “(A) calculating separately the amount of  
5 funds for services and benefits for private  
6 school students and teachers under each pro-  
7 gram that is consolidated and to which those  
8 requirements apply; and

9 “(B) totaling the amounts calculated under  
10 subparagraph (A);

11 “(2) except as described in paragraph (3), all  
12 equitable participation requirements, including any  
13 bypass requirements, applicable to the program that  
14 is consolidated shall continue to apply to the funds  
15 consolidated under the agreement from that pro-  
16 gram; and

17 “(3) the agency may use the amount of funds  
18 determined under paragraph (1) only for those serv-  
19 ices and benefits for private school students and  
20 teachers in accordance with any of the consolidated  
21 programs to which the equitable participation re-  
22 quirements apply, but may not provide any addi-  
23 tional benefits or services beyond those allowable  
24 under the applicable equitable participation require-  
25 ments under this Act.



1 **“SEC. 7306. STATE RESERVATION FOR STATE-LEVEL ACTIVI-**  
2 **TIES.**

3 “(a) STATE-LEVEL ACTIVITIES.—In order to carry  
4 out State-level activities under the purposes described in  
5 section 7305(a)(1) to exceed, by a statistically significant  
6 amount, the State’s definition of adequate yearly progress,  
7 a State educational agency that—

8 “(1) includes part A of title I in the scope of  
9 its performance agreement, may reserve not more  
10 than 5 percent of the funds under that part to carry  
11 out such activities; and

12 “(2) includes programs other than part A of  
13 title I in the scope of its performance agreement,  
14 may reserve not more than 10 percent of the funds  
15 under those other programs to carry out such activi-  
16 ties.

17 “(b) DISTRIBUTION OF REMAINDER.—A State edu-  
18 cational agency shall distribute the consolidated funds not  
19 used under subsection (a) to local educational agencies in  
20 the State in a manner determined by the State educational  
21 agency in accordance with section 7307.

22 **“SEC. 7307. DISTRIBUTION OF FUNDS UNDER AGREEMENT.**

23 “The distribution of funds consolidated under a per-  
24 formance agreement shall be determined by the State edu-  
25 cational agency in consultation with the Governor of the  
26 State, subject to the requirements of this part.



1 **“SEC. 7308. LIMITATIONS ON ADMINISTRATIVE EXPENDI-**  
2 **TURES.**

3 “(a) STATE EDUCATIONAL AGENCY.—Subject to sec-  
4 tion 7309(e)(1), each State educational agency that has  
5 entered into a performance agreement under this part may  
6 reserve for administrative purposes not more than 1 per-  
7 cent of the total amount of funds made available to the  
8 State educational agency under the programs included in  
9 the scope of the performance agreement.

10 “(b) LOCAL EDUCATIONAL AGENCY.—Subject to sec-  
11 tion 7309(e)(2), each local educational agency that has en-  
12 tered into a performance agreement with the Secretary  
13 under this part may use for administrative purposes not  
14 more than 4 percent of the total amount of funds made  
15 available to the local educational agency under the pro-  
16 grams included in the scope of the performance agree-  
17 ment.

18 **“SEC. 7309. PERFORMANCE REVIEW AND PENALTIES.**

19 “(a) EARLY TERMINATION OF AGREEMENT.—

20 “(1) PERFORMANCE GOAL FAILURE.—Begin-  
21 ning with the first full academic year after a State  
22 educational agency enters into a performance agree-  
23 ment under this part, and after providing the State  
24 educational agency with notice and an opportunity  
25 for a hearing (including the opportunity to provide  
26 information as provided in paragraph (3)), if the



1 State educational agency fails to meet its definition  
2 of adequate yearly progress for 2 consecutive years,  
3 or fails to exceed, by a statistically significant  
4 amount, its definition of adequate yearly progress  
5 for 3 consecutive years, then the Secretary shall ter-  
6minate promptly the performance agreement.

7 “(2) NONCOMPLIANCE.—The Secretary may,  
8 after providing notice and an opportunity for a hear-  
9ing (including the opportunity to provide information  
10 as provided in paragraph (3)), terminate a perform-  
11ance agreement if there is evidence that the State  
12 educational agency has failed to comply with the  
13 terms of the performance agreement.

14 “(3) INFORMATION.—If a State educational  
15 agency believes that the Secretary’s determination  
16 under this subsection is in error for statistical or  
17 other substantive reasons, the State educational  
18 agency may provide supporting evidence to the Sec-  
19retary, and the Secretary shall consider that evi-  
20dence before making a final early termination deter-  
21mination.

22 “(b) NO RENEWAL IF PERFORMANCE UNSATISFAC-  
23TORY.—If, at the end of the 5-year term of a performance  
24 agreement entered into under this part, a State edu-  
25cational agency has not substantially met the State’s defi-



1 nition of adequate yearly progress, then the Secretary  
2 shall not renew the agreement under section 7310.

3       “(c) TWO-YEAR WAIT-OUT PERIOD.—A State edu-  
4 cational agency whose performance agreement was termi-  
5 nated under subsection (a), or was not renewed in accord-  
6 ance with subsection (b), may not enter into another per-  
7 formance agreement under this part until after the State  
8 educational agency meets its definition of adequate yearly  
9 progress for 2 consecutive years following the termination  
10 or nonrenewal.

11       “(d) PROGRAM REQUIREMENTS IN EFFECT AFTER  
12 TERMINATION OR NONRENEWAL OF THE AGREEMENT.—  
13 Beginning on the first day of the first full academic year  
14 following the end of a performance agreement under this  
15 part (including through termination under subsection (a))  
16 the State educational agency shall comply with each of the  
17 program requirements in effect on that date for each pro-  
18 gram included in the performance agreement.

19       “(e) SANCTIONS.—

20               “(1) STATE SANCTIONS.—If, beginning with the  
21 first full academic year after a State educational  
22 agency enters into a performance agreement under  
23 this part—

24                       “(A) the Secretary determines, on the  
25 basis of data from the State assessment system



1 described in section 1111 and data from State  
2 assessments under the National Assessment of  
3 Educational Progress of 4th and 8th grade  
4 reading and mathematics skills, or an assess-  
5 ment described in section 7101(b)(1)(B)(ii), for  
6 2 consecutive years, that—

7 “(i) the State educational agency has  
8 failed to exceed, by a statistically signifi-  
9 cant amount, the State’s definition of ade-  
10 quate yearly progress; and

11 “(ii) students who are racial and eth-  
12 nic minorities, and economically disadvan-  
13 tagged students, in the State failed to make  
14 statistically significant progress in the aca-  
15 demic subjects for which the State has de-  
16 veloped State content and student perform-  
17 ance standards,

18 then the amount that the State educational  
19 agency may use for administrative expenses in  
20 accordance with section 7308 shall be reduced  
21 by 30 percent; and

22 “(B) the Secretary determines that a State  
23 educational agency fails to make adequate year-  
24 ly progress as described in subsection (b) of



1 section 7102, the Secretary shall reduce State  
2 funds in accordance with such subsection.

3 “(2) LOCAL EDUCATIONAL AGENCIES.—If, be-  
4 ginning with the first full academic year after a local  
5 educational agency enters into a performance agree-  
6 ment under this part, the Secretary determines, on  
7 the basis of data from the State assessment system  
8 described in section 1111 that a local educational  
9 agency failed to exceed, by a statistically significant  
10 amount, the State’s definition of adequate yearly  
11 progress for 2 consecutive years, then the amount  
12 that the local educational agency may use for admin-  
13 istrative expenses in accordance with section 7308  
14 shall be reduced by 30 percent.

15 **“SEC. 7310. RENEWAL OF PERFORMANCE AGREEMENT.**

16 “(a) IN GENERAL.—Except as provided in section  
17 7309 (a) and (b), and in accordance with this section, the  
18 Secretary shall renew for 1 additional 5-year term a per-  
19 formance agreement under this part if the Secretary deter-  
20 mines, on the basis of the information reported under sec-  
21 tion 7304(a)(1)(K), that the adequate yearly progress de-  
22 scribed in the performance agreement has been exceeded  
23 by a statistically significant amount.

24 “(b) NOTIFICATION.—The Secretary shall not renew  
25 a performance agreement under this part unless the State



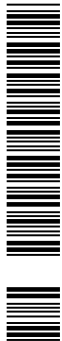
1 educational agency seeking the renewal notifies the Sec-  
2 retary of the agency's intention to renew the performance  
3 agreement not less than 6 months prior to the end of the  
4 original term of the performance agreement.

5       “(c) EFFECTIVE DATE.—A renewal under this sec-  
6 tion shall be effective at the end of the original term of  
7 the performance agreement or on the date on which the  
8 State educational agency provides to the Secretary all data  
9 and information required under the performance agree-  
10 ment, whichever is later, except that in no case may there  
11 be a renewal under this section unless that data and infor-  
12 mation is provided to the Secretary not later than 60 days  
13 after the end of the original term of the performance  
14 agreement.

15 **“SEC. 7311. EVALUATION.**

16       “(a) STUDY.—The Secretary is authorized to award  
17 a grant to the Comptroller General to conduct a study ex-  
18 amining the effectiveness of the demonstration program  
19 under this part. The study shall examine—

20               “(1) the performance of the disaggregated  
21 groups of students described in section  
22 1111(b)(2)(C)(iii)(III) prior to entering into the per-  
23 formance agreement as compared to the perform-  
24 ance of such groups after completion of the perform-  
25 ance agreement on State assessments and the Na-





1 tional Assessment of Educational Progress, or an as-  
2 sessment described in section 7101(b)(1)(B)(ii);

3 “(2) the graduation rates (as required by sec-  
4 tion 1111(h)(1)(D)(iii)) prior to entering into the  
5 performance agreement as compared to the dropout  
6 data after completion of the performance agreement;

7 “(3) the ways in which the State educational  
8 agencies and local educational agencies entering into  
9 performance agreements distributed and used Fed-  
10 eral education resources as compared to the ways in  
11 which such agencies distributed and used Federal  
12 education resources prior to entering the perform-  
13 ance agreement;

14 “(4) a comparison of the data described in  
15 paragraphs (1), (2), and (3) between State edu-  
16 cational agencies and local educational agencies en-  
17 tering into performance agreements compared to  
18 other State educational agencies and local edu-  
19 cational agencies to determine the effectiveness of  
20 the program; and

21 “(5) any other factors that are relevant to eval-  
22 uating the effectiveness of the program.

23 “(b) REPORT.—The Secretary shall make public the  
24 results of the evaluation carried out under subsection (a)  
25 and shall report the results of the study to the Committee



1 on Health, Education, Labor, and Pensions of the Senate  
2 and the Committee on Education and the Workforce of  
3 the House of Representatives.

4 **“SEC. 7312. TRANSMITTAL OF REPORTS TO CONGRESS.**

5 “Not later than 60 days after the Secretary receives  
6 an annual report described in section 7304(a)(1)(K), the  
7 Secretary shall make the report available to the Com-  
8 mittee on Education and the Workforce of the House of  
9 Representatives and the Committee on Health, Education,  
10 Labor, and Pensions of the Senate.”.

